TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 488

(19,174.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 162.

MRS. BEULAH SCHWEER AND J. C. NORMAN, APPELLANTS,

vs.

J. C. BROWN, TRUSTEE FOR G. H. SCHWEER, BANKRUPT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered, that at a district court of the United States of America, in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 19th. day of October anno Domini, one thousand nine hundred and three at the United States court room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber judge presiding and holding said court, the following proceedings were had, to-wit:

In re G. H. SCHWEER, Bankrupt.

Petition for Restraining Order.

Comes the trustee herein by Pugh & Wiley, Esqs., his attorneys and respectfully represents to the court that *at* the examination of J. C. Norman this day had before the referee, discloses that he, the said Norman, had in his possession the sum of $2000.00 which he received from the wife of the bankrupt since the adjudication of bankruptcy and which he holds for her, and that the trustee believes and therefore alleges that said sum of money is not Mrs. Schweer's but is a part of the property of the bankrupt and belongs to his estate, and should be delivered to the trustee, and that he believes that said J. C. Norman is about to deliver the said $2000.00, to the wife of the bankrupt, and will do so unless by the court restrained from so doing, and that if he does so deliver to the bankrupt's wife, the said sum will be in imminent danger of being lost to the estate; the said wife of the bankrupt being insolvent; and,

Wherefore he prays that a temporary restraining order be made by the court restraining said James C. Norman from delivering said sum, or any part thereof, to Mrs. Schweer, or to anyone else than the trustee herein, until the proper legal proceedings can be in course instituted to require the said sum to be delivered to the trustee in bankruptcy.

(Signed) PUGH & WILEY,
For Trustee.

Geo. B. Pugh being duly sworn says on his oath, that he is one of the attorneys for the trustee herein, and that said trustee is absent from the county at this time, and that the statements made in the foregoing petition are true.

(Signed) GEO. B. PUGH.

Sworn to before me this 19th day of February, 1903.

(Signed) P. C. DOOLEY, *Referee.*

1—162

2 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

In re G. H. SCHWEER, Bankrupt.

J. C. BROWN, Trustee,
vs.
Mrs. BEULAH SCHWEER, Defendant.

Comes J. C. Brown, trustee in bankruptcy for G. H. Schweer a bankrupt, by his attorneys, Pugh & Wiley, and respectfully represents to the court that the defendant Mrs. Beulah Schweer, the wife of the said bankrupt, has in her possession a large sum of money, to-wit: about the sum of five thousand dollars, which she received from said bankrupt about the time or since the filing of the petition in bankruptcy against him in this court; that said money is a part of the assets of said bankrupt's estate and now belongs to said trustee; that said Mrs. Beulah Schweer retains the same and refuses to deliver it to the said trustee.

And to the end that said Beulah Schweer shall not pay over to any other person said money now in her possession or otherwise dispose of same during the pendency of this proceeding said trustee prays that she be restrained from in any way parting with the possession thereof or any part thereof until the further order of this court.

Wherefore the said trustee prays that said Mrs. Beulah Schweer be cited before this court to show cause why she should not be required to deliver said money to said trustee, and for all proper relief.

(Signed) PUGH & WILEY,
Attorneys for said Trustee.

Geo. B. Pugh says that he is one of the attorneys for said trustee, who is absent from this county, and that he believes the statements made in the foregoing petition are true.

(Signed) GEO. B. PUGH.

Subscribed and sworn to before me Feb. 20, 1903.

(Signed) ELMER ENDICOTT,
[SEAL.] *Notary Public.*

My com. exp. 7/16/1904.

3 (Endorsed:) *In re* G. H. Schweer Brown, trustee *v.* Norman. Application for restraining order. Filed Feb'y 19 1903 (Signed) P. C. Dooley, referee.

4 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

In re G. H. SCHWEER, Bankrupt.

J. C. BROWN, Trustee,
vs.
J. C. NORMAN, Defendant.

Comes J. C. Brown, trustee in bankruptcy for G. H. Schweer, a bankrupt, and respectfully represents to the court that the defendant J. C. Norman, has in his possession the sum of two thousand dollars belonging to the estate of said bankrupt, G. H. Schweer, that he retains the same and refuses to deliver it into the possession of said trustee.

Wherefore, said trustee prays that the said J. C. Norman be cited to appear before this court and show cause why he should not be required to deliver said two thousand dollars to said trustee, and for all proper relief.

(Signed) PUGH & WILEY,
Attorneys for said Trustee.

George B. Pugh says that he is one of the attorneys for the said trustee, who is absent from this county, and that he believes the statements made in the foregoing are true.

(Signed) GEO. B. PUGH.

Subscribed and sworn to before me this 20 day of Feb., 1903.

[SEAL.] (Signed) ELMER ENDICOTT,
Notary Public.

Commission expires July 16, 1904.

(Endorsed:) *In re* G. H. Schweer, bankrupt. J. C. Brown trustee *vs.* J. C. Norman, Filed Feb. 20th. 1903. (Signed) P. C. Dooley, referee.

5 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

In re G. H. SCHWEER, Bankrupt.

J. C. BROWN, Petitioner,
vs.
JAMES C. NORMAN.

Response.

Comes James C. Norman, and in response to an order directed to him by Hon. P. C. Dooley, referee, *in re* G. H. Schweer who was

adjudged a bankrupt Nov. 25. 1902 *bankrupt*, requir- him to show cause on the 26th. day of Feb'y 1903, why an order should not be made requiring him to pay over two thousand dollars to James C. Brown trustee, which order has this 23rd. day of February 1903, been duly served on him by one Henry Stillwell, and the said J. C. Norman now shows cause why he should not be required to pay over to the said trustee in bankruptcy the said sum of two thousand dollars received by him from Mrs. G. H. Schweer, and for cause shows.

That prior to the issuance and service of said restraining order he had paid over to her the said sum and returned to her said sum of money, by sending her a check for same, being advised, and as he verily believed that it was her separate and individual property, she claiming it as such, defendant J. C. Norman further answering says that this court is without jurisdiction to hear and determine this cause and prays that the same may be dismissed.

(Signed) JAS. C. NORMAN.

Jas. C. Norman, on oath says that the statements of the foregoing response are true.

(Signed) JAS. C. NORMAN.

Subscribed and sworn to before me this 23 day of Feb'y 1903.

[SEAL.] (Signed) JAMES B. BUNN, *N. P.*

(Endorsed:) *In re* G. H. Schweer, bankrupt. Response of James C. Norman. Filed Feb. 26 1903. P. C. Dooley, referee.

6 In the United States District Court for the Western Division of the Eastern District of Arkansas.

In re G. H. SCHWEER, Bankrupt.

JAMES C. BROWN, Petitioner, *vs.* BEULAH SCHWEER. } Response to Motion to Show Cause, & etc.

Comes the defendant Beulah Schweer by her solicitors, J. C. Norman & H. H. Myers, and in response to motion and order heretofore made by the honorable referee to-wit: on Feb. 20th. 1903, directed to the defendant to show cause why an order should not be made on her to turn over to the petitioner as trustee in bankruptcy of the estate of G. H. Schweer, certain sum of money, to-wit: $5000.00, alleged to be in her possession and control, answering said order defendant states, first: She denies that she has at present or has ever had in her possession or control the said sum of $5,000.00 or any other sum whatever belonging to or due the estate of G. H. Schweer.

Second. She denies that this court has jurisdiction to hear or determine this cause.

Wherefore for these reasons she prays that the motion be dismissed and she be permitted to go hence without day.

(Signed) J. C. NORMAN,
H. H. MYERS,
For Defendant.

Beulah Schweer being first duly sworn states that the statements set forth in the foregoing response are true.

(Signed) BEULAH SCHWEER.

Subscribed and sworn to before me this 26 day of Feb'y 1903.

(Signed) ELMER ENDICOTT,
[SEAL.] *Notary Public.*

My commission expires July 16, 1904.

In re G. H. Schweer. Answer of Mrs. Beulah Schweer to order to show cause. Filed Feb. 26. 1903. (Signed) P. C. Dooley, referee.

7 In the District Court of the United States for the Western Division of the Eastern District of Arkansas. In Bankruptcy.

In the Matter of G. H. SCHWEER, Bankrupt.

I, P. C. Dooley one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceeding in said cause before me the following proceedings arose:

On February 20, 1903, J. C. Brown the trustee, of said estate, filed before me his petition showing that one J. C. Norman had in his possession the sum of $2,000. belonging to said estate, which he retains and refuses to pay to the trustee, and asking that J. C. Norman be required to show cause why he should not be required to pay said sum to the trustee.

Such an order was made.

And on the 26 day of Feb., 1903, J. C. Norman filed his response denying that he had any money belonging to the estate. On this issue proofs were taken and hearing had before me.

I find the following facts:

It became necessary for the bankrupt to give a bond in a criminal proceeding and to indemnify his bond-man, J. C. Norman, one of his attorneys deposited with him or for his use in the Citizens bank at Little Rock, $2,000. This is the money that is claimed by the trustee.

This money was delivered to Norman by the bankrupt's wife in the presence of the bankrupt at her home in Parkdale, Ark.

She claims that she got this money from her husband, the bankrupt when they were married on the — day of October, 1899.

The trustee claims that her husband gave her the money about the time he failed, or shortly before when he was insolvent. This is the question for the referee to decide, and I find in favor of the trustee.

8 G. H. Schweer went from Fort Smith to Parkdale, Ark., in June 1899; in October of the same year he was married. While at Fort Smith his salary was $50 per month. At Parkdale it was $75. From Parkdale he went to Portland where he earned $80 per month. He was thirteen months at both places. His entire earning was $1000, and he had himself and wife to support.

He went from Portland to Montrose in July and in the following January he purchased a one half interest in the business of one R. J. McBride; being at Montrose six months only when he purchased the business. He earned here $175 per month. Shortly before he made this purchase he received from his father's estate $1.500. This sum, and whatever his savings were is all the means he had when he purchased the one half interest in the McBride business. For this one half interest he paid $2,750.

Soon afterwards he purchased the other half of the McBride business. He did an apparently prosperous business here until a short time before his failure.

Taking Schweer's testimony in the light of surrounding circumstances and his contradictions, I find that he had little or no money when he was married and did not then give his wife $2,500. His savings from that time until he bought the one half interest in the McBride business with the $1,500 from his father's estate was no more than he paid McBride.

Of the sum Norman, received from Mrs. Schweer, something like $700 of it was in railroad time checks. Her explanation of how *when* she acquired these is very unsatisfactory, as well as her statement in relation to the custody and care of the $2,000 since she got it until she paid it to Norman.

My finding is that the bankrupt delivered these time checks and the money to his wife at or about the time he suspended business and when he was insolvent, and the money came from his business.

That the money was returned to J. C. Norman by Mr.

9 Thompson the surety on his bond, and is now in his possession, and is the property of the estate, and ought to be delivered to the trustee, and an order will be made accordingly.

All the proofs taken, submitted and considered are, and the order of the referee are transmitted herewith, and the question is certified to the judge of this court for his opinion.

Made this August 20, 1903.

(Signed) P. C. DOOLEY, *Referee.*

10 I further certify that on February 20th, 1903, James C. Brown trustee herein, together with his petition as aforesaid against James C. Norman, filed also his like petition against Beulah Schweer asking an order on her to show cause why she should not

turn over to the trustee certain moneys alleged to be in her possession or control belonging to the estate of the bankrupt.

Such order was made at the same time the order aforesaid against James C. Norman was made.

On the 26th day of February, 1903, the said James C. Norman and Beulah Schweer appeared together in court before the referee in their proper persons and by their attorney H. H. Myers and filed their separate responses to the petitions of the trustee, denying each for himself and herself that they had any money belonging to the estate, and upon these issues the said Jas. C. Norman and Beulah Schweer were then and there examined before the referee as witnesses, and by consent of the said trustee and both respondents it was agreed and ordered that the issues on both petitions thereafter proceed together as one cause, and the proofs were taken and the hearing had before me on both petitions together. The said James C. Norman and Beulah Schweer appearing at the final hearing by their attorney H. H. Myers.

(Signed) P. C. DOOLEY, *Referee.*

11 *Orders.*

FEBRUARY 20.

On this day comes J. C. Brown, the trustee herein, and files his petition asking for a restraining order on Mrs. Beulah Schweer the wife of G. H. Schweer, the bankrupt, and the same is granted.

FEBRUARY 20.

On this day comes the trustee herein and files his petition asking for a restraining order on J. C. Norman, to prevent his paying over to Mrs. Beulah Schweer, the wife of the bankrupt the sum of $2,000, which he admits having in his possession.

FEBRUARY 26.

On this day comes J. C. Norman and files herein his answer on the motion to show cause why he should not turn over to the trustee herein the sum of $2,000, held by him and alleged by the trustee to belong to the estate of the bankrupt.

FEBRUARY 26, 1903.

On this day comes Beulah Schweer and files herein her answer to the motion to show cause why she should not turn over to the trustee the sum of $5,000 alleged to be in her possession and control and belonging to the estate of the bankrupt.

FEBRUARY 26.

The referee having this day examined James C. Norman and Mrs. Beulah Schweer in relation to an application of the trustee to require them to turn certain money over to him, being the property of the estate, and it appearing by the said examination that the

$2000, which has heretofore been in the possession of J. C. Norman which it is alleged he received from Mrs. Beulah Schweer, and which he has undertaken to return to her by giving her a check on the Hamburg bank, and it appearing that the said check is now in her possession and under her control, and it has not been
12 cashed, and it being to the best interest of the estate of this bankrupt and of the creditors that the said check should not be cashed for the present, it is ordered that the said Beulah Schweer be and she is hereby enjoined from cashing, transferring or assigning the said check or putting the same in anyway beyond her control until the further orders of the court in this behalf, and that she shall retain the same subject to the further orders of the court, and the said J. C. Norman and Beulah Schweer being now present in open court do now take full notice of this order.

13 In the United States District Court for the Western Division of the Eastern District of Arkansas.

Before P. C. Dooley, referee in bankruptcy.

In re G. H. SCHWEER, Bankrupt.

Now on this day the 18th. day of August, 1903, comes on to be heard the petition of the trustee J. C. Brown, asking that an order be made directing that Jas. C. Norman pay over to the trustee the sum of $2,000. alleged to be in his possession belonging to the bankrupt's estate, and the trustee appears by his attorneys Pugh & Wiley and the respondent the said James C. Norman by his attorney H. H. Myers, Esq. and after hearing the testimony offered by both parties and hearing the argument of counsel, and being fully advised what order to make, it is by the court ordered that the said James C. Norman be and he is hereby ordered and directed to pay over to Jas. C. Brown trustee of the estate of G. H. Schweer, bankrupt, within thirty days from the date of service upon him of this order, the sum of $2,000 which the court finds is in his possession belonging to the estate of the said bankrupt.

(Signed) P. C. DOOLEY, *Referee.*

14 In the United States District Court for the Western Division of the Eastern District of Arkansas.

Before P. C. Dooley, referee in bankruptcy.

In re G. H. SCHWEER, Bankrupt.

On this 18th. day of August, 1903 the petition of James C. Brown trustee of this estate to require James C. Norman to turn over to said trustee $2,000, alleged to be in his hands belonging to said

estate having come on for hearing, and after hearing it having been ordered by the court that said Norman pay over to the trustee said sum, now, therefore it is by the court further ordered that the restraining order made by the court on the 26 day of February, 1903, in the matter of said petition in which Mrs. Beulah Schweer was by the court restrained from cashing, transferring or assigning a certain check for the sum of $2,000. signed by said J. C. Norman and payable to her order, or from in any manner putting the check beyond her control until further order of the court in that behalf, be and it is hereby made permanent.

(Signed) P. C. DOOLEY, *Referee.*

(Endorsed:) *In re* G. H. Schweer, bankrupt. Brown, trustee *vs.* Norman. Findings of the referee. Filed Oct. 2 1903. Sid B. Redding, clerk.

15 United States District Court for the Western Division of the Eastern District of Arkansas.

In the Matter of G. H. SCHWEER. In Bankruptcy.

J. C. NORMAN, being duly sworn, his examination proceeds by reference and direction of the district judge:

(Examined by GEO. B. PUGH, Esq.:)

Q. Did anybody else put up anything to indemnify you in case there should be a forfeiture on Mr. Schweer's bond and the $2,000. you had put up should be forfeited?

A. Yes.

Q. Who put up the money or thing of value, and what was the amount and what was the thing of value?

A. Mrs. G. H. Schweer put up $2,000.

Q. Have you that money in your possession now?

A. I have.

Q. Have Charley Matthews, R. J. McBride or Gus Cammack turned you over any money for Mr. Schweer on account of your employment as Mr. Schweer's attorney, within four months before he was adjudged a bankrupt?

A. No.

Q. When did Mrs. Schweer turn you over this $2,000?

A. A few days, I don't remember how long, after I made the bond.

Q. Do you know where she got the money?

A. I do not.

Q. Did she tell you where she got the money.

A. She did not.

Q. Where were you when she turned it over to you?

A. At her home in Parkdale.

Q. Was it in cash or in form of a check?

A. I think most of it was cash. There was some time checks; railroad checks. I don't know what they were really. They were cash items, though. I know they were railroad checks.

16 Q. What was the exact amount that she turned over to you?

A. $2,000.

Q. These railroad checks you say you got you turned into money?

A. At once. They were cashed.

Q. Where is the money now?

A. I don't know. I don't know what I have done with it.

Q. Is it among your individual funds; that is deposited to your individual credit?

A. Yes, some of it is. I don't know whether I have got it all in cash now. Yes, I think it is deposited in the bank to my credit; different banks. But not that same money. I just merged this. I could not say where that money is at all; that special money.

Q. But you didn't deposit in any trust fund? You just turned it into your private account.

A. Yes.

Q. For whom do you hold that money?

A. Mrs. Schweer.

Q. Has she ever demanded it of you?

A. She wrote me a letter last week, I believe, but I haven't seen her since to pay it to her.

Q. Have you that letter?

A. I have it, but it is at home.

Q. Will you furnish that letter to the referee?

A. Yes. (Said letter is herewith attached, marked Exhibit "A" for the purpose of identification.)

Q. Have you ever refused to give this money back to Mrs. Schweer?

A. No.

Q. The money that you put up for the purpose of making Schweer's bond has been returned to you.

A. Yes.

Q. Have R. J. McBride, Charlie Matthews or Gus Cammack at any time turned over to you any money or assets of G. H. Schweer?

(Objected to.)

17 A. No.

Q. Is this $2000.00 all the money that Mrs. Schweer has ever turned over to you?

A. Yes.

Q. Didn't Mr. Schweer tell you, that at the time you put up this money to make his bond, that he would put up the money or have Mrs. Schweer do it, to indemnify you?

A. He said he would have his wife do it or that his wife would.

I don't know whether he said he would have her to do it or that she would do it.

Q. Then you went to her for it.

A. Yes.

Q. She did do it.

A. Yes. She claimed all the time that it was her money, as far as that's concerned; in her letter and she did at the time, that it was her fund.

Q. Do you know where she got this money?

A. I do not.

Q. Where did she produce the money from when she paid it over to you?

A. Really I don't know.

Q. Was most of it in greenbacks or some of it in silver and gold or what?

A. I suppose all greenbacks. Nearly all.

Q. Who were the railroad checks that you spoke of made payable to?

A. You know how they are. Made payable to bearer. They are made payable to the party they are issued to or bearer. They just pass as currency. I think that's the custom.

Q. Don't you know whether these checks you had were endorsed or not.

A. They were not. I don't think they were.

Q. Where did you deposit these checks?

A. I deposited them in the Citizens' bank.

18 (Examined by the REFEREE:)

Q. About what proportion of the $2000, was greenbacks?

A. More greenbacks. I don't remember exactly how much but most of it was greenbacks.

Q. $200,00 or $300,00 in time checks.

A. Something like that maybe. I have forgotten the amount.

(Mr. PUGH, continuing:)

Q. Can you give the date upon which you made this deposit?

A. No.

Q. Was that the only deposit you ever made in the Citizens bank?

A. No I think not. The checks were not endorsed by Schweer, I know that, if that's what you want to find out. Nor were they payable to him.

Q. Was Mr. Schweer present when Mrs. Schweer turned over this money?

A. Yes.

Q. Was anyone else present?

A. No.

Q. Did you see him with this money at all?

A. No. She had the money. She produced the money.

Q. He didn't count the money at all?
A. I think probably he counted some of it. I think he did. She had the money upon her person.

By the REFEREE:

Q. She gave the money to him and he counted it over to you?
A. I think that's the way it was, he handed it back to her. She gave him the money, he counted it, and gave it back to her and she gave it to me. He added up the amount of the checks to see how much the amount of it was. She produced the money. I know that.

(Endorsed:) Filed February 23. 1903. (Signed) P. C. Dooley, referee.

19 (EXHIBIT "A.")

G. H. Schweer, dealer in general merchandise; saloon and restaurant in connection.

PARKDALE, ARKANSAS, *Jan.* 28, 1903.

Mr. Norman, Hamburg, Arkansas.

DEAR SIR: Please bring that little "change" *due me* over to mother's some time when you are passing through there you can let me know and I will come up and get it you remember you got it from me.

Mr. Schweer went up to Little Rock Sun. night has not returned yet.

Very resp., MRS. G. H. SCHWEER.

20 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

J. C. BROWN, Trustee, Plaintiff,
vs.
MRS. BEULAH SCHWEER, Defendant.

Notice.

To Mrs. Beulah Schweer, the above named defendant:

You are hereby notified that the depositions of witnesses to be read in evidence on the part of the plaintiff will be taken at the office of A. G. Gregory in the town of Portland, county of Ashley, State of Arkansas on the sixth day of March, 1903, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon; and that the taking of said depositions, if not completed on

said day, will be continued from day to day until completed, at the same place and between the same hours.

March 4, 1903.

(Signed) PUGH & WILEY,
Attorneys for Plaintiff.

Notice accepted this 4th day of March, 1903.

(Signed) H. H. MYERS,
Attorney for Defendant.

21 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

J. C. BROWN, Trustee, Plaintiff,
vs.
JAS. C. NORMAN, Defendant.

Notice.

To James C. Norman, the above named defendant:

You are hereby notified that the depositions of witnesses to be read in evidence on the part of the plaintiff will be taken at the office of A. G. Gregory in the town of Portland, county of Ashley, State of Arkansas, on the sixth day of March 1903, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon; and that the taking of said depositions, if not completed on said day, will be continued from day to day until completed, at the same place and between the same hours.

March 4, 1903.

(Signed) PUGH & WILEY,
Attorneys for Plaintiff.

Notice accepted this the 4th day of March, 1903.

(Signed) H. H. MYERS,
Attorney for Defendant.

22 Deposition of J. A. Beringer taken before me, at Portland, in the county of Ashley, State of Arkansas, on the 6th day of March, 1903, at 9.30 o'clock a. m., in the cases of J. C. Brown, trustee, against Mrs. Beulah Schweer and J. C. Brown, trustee, against J. C. Norman pursuant to the notices hereto attached.

J. A. BERRINGER being duly sworn to testify the truth the whole truth and nothing but the truth deposeth and saith,

1. State your name, age, residence and occupation.

A. J. A. Beringer, lawful age, Portland, Ark. R. R. agent at Portland.

2. How long have you resided at Portland. How long have you been agent there.

A. About 5 months.

3. Who preceded you as agent here.

A. E. R. Mackenzie.

4. From what place did you come to Portland.

A. Blissville.

5. How long were you agent there.

A. Two months.

6. Were you ever agent at Parkdale or Montrose.

A. I was agent at Montrose.

7. About 3 months in 1899 and about the beginning of 1900 I left there.

8. About middle of Feb 1900. I never was agent at Parkdale.

9. What salary do you get as agent at Portland.

A. Sixty dollars per month and commissions which vary as to the amount of business anywhere from $12,00 to $40,00 per month. My commission has averaged to about $30. per month but this is the best part of the year.

10. Has the salaries of agents at Portland been the same for past 3 or 4 years.

A. Can't say positively but think it has.

11. What was your salary as agent at Montrose.

A. $50 per month and commissions which averaged I think about $80. per month.

12. Do you know or can you tell from any of the records
23 in your office how much salary G. H. Schweer got and how much commission while he was agent here.

A. I can't tell you on account of a good many of the records here have been destroyed the superintendent's pay roll ought to show if the records have been -reserved.

Cross-examination:

1. While you were agent at Portland and Montrose were you also telegraph operator.

A. I was at Montrose but not at Portland.

2. What salary did you get as operator at Montrose.

A. $50 salary and $80 com. covered my salary as operator

3. What salary does the telegraph operator receive at Portland

A. $50 per month and overtime which amounts to about $10 per month which would make his salary about $60. per month.

(Signed) J. A. BERINGER, *Agt'*.

G. H. SCHWEER also being duly sworn deposeth and saith:

1. When were you agent at Parkdale.

A. I went to Parkdale as agent about June 1899 and stayed there a little over one year.

2. From where did you go to Parkdale.

A. Fort Smith.
3. What position did you occupy at Fort Smith.
A. I — working for the Pacific Express Co.
4. What salary did you get at Fort Smith.
A. I think it was $50 per month.
5. What salary did you get at Parkdale.
A. Salary of $50 and commission which amounted to about $25 per month.
6. What time did you marry.
A. About October 8, 1899.
7. How much were your expenses previous to your mar-
24 riage per month at Parkdale.
A. About $15 or $20 per month.
8. Do you mean to say that was all you spent on an average.
A. Yes I think that will cover it.
9. What was your salary while agent at Portland.
A. $50 and commission amounting to about $30 per month.
10. What was your expenses at Portland.
A. I suppose about $40 per month.
11. What was your salary as agent at Montrose
A. $50 and commission amounting to about $100 or 150 per month sometimes a little over making in all $150 to $200 per month.
13. Are you positive that you ever received as much as $200 per month while you were agent at Montrose.
A. I am positive that it was somewhere near that amount may not been exactly.
14. Are you positive that you ever received as much as $150 per month while you was agent at Montrose.
A. Yes.
15. When did you buy the first ½ interest in McBride's business at Montrose.
A. About Jan. 1, 1901.
16. How much did you pay him and where did you get the money.
A. I paid him I think it was $2500 at that time. I inherited the most of that money.
17. How much did you inherit
A. Most all of that I don't remember exactly.
18. From whom did you inherit this money.
A. My father.
19. When did he die.
A. I think it was in 1899.
20. Who had charge of and wound up his estate.
A. My brother J. H. Schweer, Blairstown Mo.
21. Who was it sent you your part of the estate.
A. My brother J. H. Schweer I think it was in 1900 while I was at Montrose.
25 22. Did he send it all at one time.

A. No I think it came at different times.

23. How did he transmit it to you.

A. I think he sent exchange for it.

24. Where did you deposit the money.

A. I think some of it was deposited in this bank Portland bank. I kept some of it in my possession.

25. Will $2500 cover all you ever got from your father's estate.

A. I don't remember the amount but I think it was more than that. He gave me some before he died.

26. Is there anything left of your father's estate, which has not been paid to you.

A. I think I have got a little interest in a home up there a small place and don't amount to much my interest would be 1/9 part.

27. Who has the property in charge.

A. My brother, J. H. Schweer.

28. How many times did you get money from your father's estate.

A. I don't remember how many times.

29. State as near as you can how much you got at different times, and how much in all.

A. I think it was about $2,000 at one time and $500 at another time.

30. Did you get all this money before you bought out McBride.

A. Before or just about the time.

31. How much money did you pay McBride for the second ½ interest in the business.

A. He got about $2500 which my brother paid he was my silent partne- it was my brother Henry who was at Monette, Mo.

32. You paid McBride all the money that you got from your father's estate did you.

A. No sir I don't think I did.

33. How much money did you have left to do business with after you bought out McBride.

A. I had about $800 or $1000.

26 34. Where did you have that money.

A. I had it at Montrose in the safe.

35. Where did you do your banking business before you bought out McBride.

A. I don't remember of doing anything up to that time.

36. Where did you do your banking business for the first few months after you bought out McBride.

A. Portland mostly probably some at Hamburg and Monticello.

37. Who did you deposit your money with while you was agent at Portland and Montrose.

A. I don't remember of ever depositing any during that time.

38. How much money did you have when you went to Parkdale as agent.

A. About $2,500.

39. How much money did you have when you married.

A. About the same amount.

40. How much money did you have when you went to Portland.
A. About $1,000 or $1,200, somewhere along there.
41. How much money did you have when you went to Montrose as agent.
A. About $1,500.
42. How much money did you have just before you got the first money from your father's estate.
A. About $1,200.
43. Where did you keep the money before you bought out McBride.
A. I most always kept it in the safe.
44. Where did you get the $2,500 you say you had when you went to Parkdale.
A. That was money I saved up of several years' work except $600 which my father gave me.
45. How did your father happen to give you $600 at that time.
A. I don't remember at what time but he gave all the children $600.

27 X:

1. Have you given your wife any money since your marriage if so state the amounts and the time you gave it to her.
A. I gave her $1,500 shortly after we were married and gave her about $1,000 more while I was agent at Montrose.
2. Are you sure you still have an interest in the property at Blairstown, Mo.
A. No sir I am not positive about it it may have been settled at my mother's death the whole property would not be worth over $500.

Re-direct:

1. Were you present when Mrs. Schweer turned over $2,000 to J. C. Norman.
A. Yes.
2. Who counted the money over to him.
A. My wife handed me the money and I counted it.
3. What amount of currency was there and what amount of checks.
A. I don't remember the amounts.
4. Did you not have a list of the checks and add them up.
A. Yes I think we did.
5. State as near as you can what amount was the checks.
A. In the neighborhood of ⅓ or ¼ of it.
5. Had you ever seen these checks before.
A. I don't know whether I had or not probably some of them.
6. Had you not cashed these checks in your store about pay day in November.
A. No there may have been some which I had my wife to cash people would come in with the checks and want them cashed and I

would take them to my wife and get her to pay them the money on them.

7. Why did you not cash them yourself.

A. Because I didn't have the money.

8. Name as many of the parties as you can whose checks were cashed in that way.

28 A. I think there was the pile driver gang there who had their checks cashed in this way, they were all strangers to me, they were R. R. checks and they were endorsed by the paymaster and I paid no attention to their names frequently one party would cash several parties' checks.

9. Where did Mrs. Schweer have this money when you took the checks in to get her to cash them.

A. She had it on her person sometimes in her trunk.

10. Did she go into her trunk to get out money to cash any of these checks which you took her at the pay day in November.

A. I don't remember but I think she did.

11. Did she have a considerable amount of money in her trunk.

A. I don't think she had her trunk there in November.

11. Was she there herself on the November pay day or did she send up the money.

A. There was two pay days and I think she was there at one.

12. Did she send up money to cash checks.

(Mr. Pugh asks the notary to put down here that Mr. Norman states to the witness that Mrs. Schweer never did send up any money did she?)

A. I don't remember of her ever sending up any.

13. How many days before your business was closed up was the pay day upon which Mrs. Schweer was there and how did she happen to be there.

A. The M. R. H. & W. pay day is usually 14 or 15 and the Iron Mountain is between 18 & 21 I don't know which one of the pay days she was there she came up there frequently

14. What time did she leave there and go to Parkdale.

A. I don't remember about one month before I was closed up.

15. About how many trips did she make back there between that time and the time you were closed up.

A. I don't remember.

16. Did she make more than three.

A. I think she did I think she made I think she made more than that but I don't remember.

29 17. Did she bring a large sum of money with her each time or only once.

A. As far as I know she carried her money with her all the time.

18. You never did use any of this money you had given her in your business did you.

A. Small sums occasionally she never refused to let me have it and I paid it back as soon as I took it in.

19. You never did borrow very much at a time did you.
A. No.
20. About how much at any one time?
A. About $500.
21. You never did borrow that much more than once or twice did you.
A. No sir.
22. You knew she had this money all the time.
A. Yes sir.
23. Did you borrow any money from anyone else while you were in business.
A. I don't remember of borrowing any.
24. How much money did your wife have when you was closed up.
A. About $2,500.
25. When did J. C. Norman ask you to turn over this $2,000 to him.
A. I don't remember of his asking me.
26. Did you not promise him at Little Rock when he put up the $2,000 in Mr. Thompson's hands to indemnify Thompson for going on your bond that you put up $2,000 to indemnify Norman.
A. No sir I didn't tell him that I didn't have none to put up.
27. Did you not tell him that you would have your wife to put up $2,000 to indemnify him.
A. We talked a little about it as we came on down to Parkdale.
28. Didn't you promise him in Little Rock that you would have this money put up.
30 A. I told him I would see my wife about it and I thought it would be all right.

(Signed) G. H. SCHWEER.

STATE OF ARKANSAS, }
County of Ashley. }

I A. J. Gregory, a notary public within and for Ashley county, do certify that the foregoing depositions of J. A. Beringer and G. H. Schweer were taken before me, and were read to them and subscribed by them in my presence at the time and place and in the actions mentioned in the caption, the said Beringer and the said Schweer having been first sworn by me that the evidence they should give in the action should be the truth the whole truth and nothing but the truth, and that their statements were reduced to writing by me in their presence, both parties being present by attorneys and the defendant Norman being present in person.

Given under my hand and official seal this 6th day of March, 1903.

(Signed) A. J. GREGORY, *N. P.*

(Endorsed:) Depositions of J. A. Beringer and G. H. Schweer. Brown *vs.* Norman and Mrs. Schweer. Filed March 7 1903. P. C. Dooley, referee. Filed Oct. 2, 1903. Sid B. Redding, clerk.

31 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

In the Matter of GEORGE H. SCHWEER, Bankrupt.

FEBRUARY 26, 1903.

J. C. NORMAN on oath being by the referee first duly sworn deposes and testifies as follows:— And is introduced on the order issued to show cause why certain sums of money should not be turned over to the trustee of the estate of G. H. Schweer, bankrupt, said witness being called by counsel for trustee.

By GEORGE B. PUGH, Esq.:

Q. Mr. Norman you testified here the other day that you had in your possession $2,000 that you received from Mrs. G. H. Schweer. You state in your response to this order to show cause that you have paid it over to her since that time; now I wish you would state just exactly when and in what manner you paid that money over to Mrs. Schweer?

A. Well after that examination we went down to the office—after that examination the other day I went down to the office of Mr. Myers and drew a check for the money and sent it to her by mail.

Q. When did you mail it?

A. Mr. Myers mailed the letter in one of these boxes here in town, Mr. Myers mailed the letter.

Q. He knew that you had drawn the check did he?

A. Yes, sir.

Q. On what bank did you draw that check?

A. Hamburg bank.

Q. For the whole amount?

A. Yes, sir, whole amount. $2,000.

Q. You did not have that much money there though did you?

A. I don't think I did. I don't know how much I had in the bank.

32 Q. You testified up here that you did not have that much money in any one bank.

A. No, sir, I did not. I said I did not know how much money I had in any one bank. I don't know, I have money in every bank in the county.

Q. Why were you in such a hurry to send Mrs. Schweer this check?

A. I had—I thought it was my duty to send it.

Q. Do you know whether or not she has received it?

A. I don't think she has. I would not say positively.

Q. Has the check been paid?

A. I don't think it has. But it is my check that is out and of course I am responsible for the payment of it.

Q. You still then, have that $2,000 in your possession?

A. Well my check is out for it. I am good for the check, and I consider that I have paid it for I am responsible for that check, and I am worth several times that over.

Q. How was the check signed?

A. James C. Norman.

Q. Now, Mr. Norman, I wish you would state again who was present when you got this money which you say you got from Mrs. Schweer?

A. No one, but myself and Schweer and his wife.

Q. Can you state now on reflection, what proportion of that $2,000 was in cash and what in checks?

A. No, I really could not.

Q. Can you not approximate it?

A. I don't believe I can.

Q. The checks you said you deposited were in the Citizens bank?

A. Yes, sir.

Q. Can you not refer to that deposit slip and tell how much they amounted too;

A. I probably could if I had them with me, I haven't got them.

Q. Did you deposit anything else except them in the Citizens bank?

A. Why, I don't know. I had other transactions with that bank. I don't know. I had bought some property down here about
33 that time, and I was making deposits there and drawing against them. I don't remember.

Q. Well, you could go to the Citizens bank and see if you can find out what the amount of those checks was that you received, and inform the referee.

A. I don't know. You are at liberty to go if I can't find it. I want to go home as soon as I can. I don't see that I will have the time to go around there and see about it. But I am perfectly willing to give you the liberty of going there and finding out. If I can find the slips I will send them up.

Q. Is the money that you deposited there, or checks rather to your credit in that bank?

A. No, sir. I say that I was buying some property here at that time, and I was just making deposits here to pay for it and drawing on it.

Q. This money that you received from Mrs. Schweer you just treated as your own?

A. Yes, sir. Put it there with my other funds.

Q. Now this money Mr. Norman was turned over to you for the benefit of Mr. Schweer wasn't it?

A. Oh, no, it was not.

Q. Wasn't it to be used for Mr. Schweer's benefit if it became necessary?

A. No, I did not consider it so.

Q. Wasn't it to be used in effecting a compromise for Mr. Schweer if it could be done?

A. No, sir, never was.

Q. And hasn't that been the understanding all along?

A. No, sir, there was some talk of that kind that it probably could be done, but I have had no understanding that that was to be a part of it at all. We talked about it I believe as lawyers, but she never did. I never had any such kind of conversation with Mrs. Schweer, but I just went upon the supposition that it could be used, and thought that she would consent to it, but I never
34 did mention it to her.

Q. Has Mrs. Schweer ever demanded this money of you?

A. Never.

Q. On what train did you leave Little Rock after you testified here?

A. I left on the night train; it leaves at 8.35 I believe.

Q. Where did you go to that night?

A. Why I went to Portland.

Q. When did you next see Mrs. Schweer after you testified here last?

A. Why, I don't know she was out of town a day or two ago. I don't know whether I seen her since that time or not.

Q. I asked you when was the next time you saw her after you testified here last Thursday?

A. I saw her out at Hamburg next.

Q. When was that?

A. That was—it was the 23rd I think; on Monday. I wouldn't be positive though of the day.

Q. Did she come down to Hamburg on Sunday or Monday?

A. I don't know, but I think it was directly after I came home.

Q. Did she have that check with her?

A. I don't know.

Q. You did not speak to her about?

A. We had some talk there about it.

Q. Did you find out whether she had the check or not?

A. I never asked her.

Q Well now don't you know that she has not collected that check?

A. I don't think she has.

Q. Have you directed the bank not to pay this check for the present?

A. No, sir.

Q. Have you requested her not to present the check for payment?

A. Why, no I did not make any such demand as that. Further I can't make such a demand as that.

Q. When did you receive the telegram from the referee informing you that a restraining order had been issued?

35 A. About 3 o'clock on the 20th.

Q. On the day after you left here?

A. Yes, sir, here on the 19th. I received after the local went north—down train, and I think that train was about an hour and a half late—it was something about 3 o'clock when I got that dispatch. I will say this further, that as soon as I received the telegram notifying me that a restraining order had been issued and I saw that I might have to pay the check twice, I saw the postmaster there at Montrose and I told him that I expected a letter that coming mail and if it come to take up the letter and not deliver the letter,—that was the letter to Mrs. Schweer but the letter had gone down on the night train and was delivered the next morning before I got down there.

Q. Now wasn't it Mr. Norman at your suggestion that the check has not been cashed?

A. Why I do not. I can't say that it is really. I haven't seen the check.

Q. What did you say to the bank about it?

A. Never said a word to the bank.

Q. Nor to any officer of the bank?

A. No, sir.

Q. Nor to Mrs. Schweer about not cashing it?

A. No, sir.

Q. Nor to Schweer himself about not having his wife cash it?

A. No, sir.

Q. What was the reason Mr. Norman that this check has not been presented and cashed?

A. I don't know. I really can't tell you. I say this that I don't think the check would have been cashed, because I don't think I had that sum of money in the bank there at that time.

Q. How much money did you have there?

A. I don't know; somewhere about $600 or $800, somewhere about that; probably $1,000.

Q. Did the bank notify you of an overdraft?

36 A. No, sir.

Q. And say that they refused to pay it?

A. No, sir, nothing of that kind has ever been presented to me. Of course the bank would have paid it,—I suppose the bank would have paid it if I had asked them, I suppose they would whether I had the funds there or not; but I never received any notice from the bank about it, and I don't think it has ever been presented to them.

Q. Then you have not made any arrangement with the bank about taking it up?

A. No, sir. But Mrs. Schweer can collect it against me for I am solvent. As far as I am concerned I would have to pay that check

if she presented it for I am worth several times over the amount of that check.

Q. This letter that Mrs. Schweer wrote you, that you attached to your former deposition here, was dated the 28th. day of January 1903 Why did you not pay that money over to her before you came up here the other day?

A. Why Mrs. Schweer has been sick in bed for three or four weeks, I expected to pay her though.

Q. Have you answered her letter?

A. I don't know. I would not say positively. I may have answered it. I don't remember now whether I did or not.

Q. Why didn't you send her a check just as you finally did?

A. I don't know why, unless she had asked me for the money and I thought maybe she wanted it paid in actual cash.

Q. Don't you know that it was just because you were holding that money for Schweer as his attorney, and that you were expecting to use it for him?

A. No, sir. I did not.

Q. You say that you have not seen this check that you sent Mrs. Schweer since you drew it and gave it to Harry Myers?

A. I have not. I drew the check and put it in that letter and as we were walking down the street Mr. Myers stepped across
37 the street and mailed it, and it went down on the night train and was delivered.

Q. You state Mr. Norman that you cannot say whether it was at your suggestion that the check had not been presented or not. To whom have you talked about the *the* matter of presenting this check or not presenting it?

A. Nobody that I know of.

Q. Why did you say that you did not know whether it was at your suggestion that the check had not been presented?

A. Why I say that I do not think that I said—I did not make any suggestion or anything about it.

Q. You have never made any suggestion to a person or any person in regard to the presentation of that check to anybody?

A. No, I don't think that I have. I don't remember anyone. That check is absolutely in her control, and she can endorse it to you to day and you can bring suit and make me pay it. I will have to pay that check. I have no control over it, and I don't pretend to have any control over it——

Q. Do you know whether or not Mrs. Schweer has assigned that check or not?

A. I do not, no, sir.

Q. Do you know whether she had it in her possession when she was at Hamburg on Monday or not?

A. I do not know.

Q. Did she not mention it to you at all?

A. I don't remember. I know that she did not exhibit it anyhow.

Q. Did she say that she had it in her possession?
A. No, sir, I don't believe she did.
Q. Was the matter of the check mentioned between you and Mrs. Schweer at all?
A. We talked something—had something to say about it I believe. Nothing of that kind though. We had something to say about it though.
Q. Was Mr. Schweer with her when she was out there?
A. No, sir. I saw them down at the hotel a few minutes
38 and Mrs. Schweer came up the next morning to see me and we talked about this case and some time after that I saw Mr. Schweer.
Q. You saw Mr. and Mrs. Schweer the night they came into Hamburg did you?
A. Yes, sir.
Q. Down at the hotel?
A. Yes, sir.
Q. What hotel were they stopping at?
A. Gladen hotel.
Q. Didn't you then on that night mention to her about the check?
A. No, sir, the check wasn't mentioned in my recollection. I am pretty well satisfied that there wasn't any talk about the check at that time.
Q. Had you then been served with the order restraining you from paying over the money?
A. Yes, sir.
Q. Did you mention that matter to her?
A. Yes, sir.
Q. Had she been served with the order restraining her?
A. No, sir, she had not. At least I am not advised that she had been.
Q. Do you not know that she had come over to Hamburg, on that trip to get that check cashed?
A. I don't know that she did. She did not present the check to the bank I don't think.
Q. She did not state to you that that was her business out there?
A. No, sir.
Q. Mr. Norman, how long have you known Mrs. Schweer?
A. Why I have known her a number of years George.
Q. You are well acquainted with the fiancial condition of her family are you not?
A. I have never had any financial transactions with them that I know of in my life.
Q. What is their financial standing in the community—how are they regarded in that respect in the community?
39 A. I don't know whether they have got any money or not. I have heard that they haven't got much money, but I don't know much about that, but I would rather suppose that they didn't have very much money.

Q. Do you not know that Mrs. Schweer was a very poor girl before she was married?

A. Yes, sir, that is my impression, but she was a good girl though.

Q. And that her mother was a widow?

A. Well it is not necessarily always that a widow is poor——

Q. Well you know that her mother was a widow and without money?

A. Yes, sir.

Q. That her father was dead?

A. Yes, sir.

Q. And that he left no property whatever?

A. No, sir, I don't think he did. He had some real estate over there or an interest in some, but I don't know what interest. He had some lands out on the bayou, but I don't know to what extent. He had some property in the way of real-estate that he inherited from the Maxwell estate.

Q. Well you know that all his real estate interests he ever had were exhausted a good while before his death don't you?

A. No, I do not. I think the property came to them at his death.

Q. Don't you know that all his interest in the property that he inherited was levied on and sold under execution on a judgment in a criminal proceeding down there in Ashley county?

A. No, sir, I do not.

Q. I believe you stated the other day Mr. Norman that you did not know whether Schweer or Mrs. Schweer actually handed you the $2,000, and do you not know on reflection that Mr. Schweer counted it out and handed it to you?

A. After talking with Mrs. Schweer she said that it was agreeable with her and she handed it to me. That is my recollection of it. I never said that he, (Mr. Schweer) handed it to me. We was talking with her about it and she said that she would.

40 Q. Was Mrs. Schweer up here with Schweer when he was arrested and required to give this bond that you deposited the money for?

A. No, sir, I don't think she was. I wouldn't answer positively about that. I don't know whether she was or not. She had been up here several times. I don't remember all these things. I don't know.

Q. Will you say Mr. Norman that you have never refused to turn this money over to Mrs. Schweer?

A. I never have.

Q. Both Mr. and Mrs. Schweer in town to day?

A. Mr. Schweer is not. I think that Mrs. Schweer is, if she has not left. She was here this morning.

By the REFEREE:

Q. Mr. Norman, I believe you stated that you got the telegram of the referee notifying you that a restraining order had been issued on the following day after you left Little Rock?

A. Yes, sir.
Q. On what day did you get the service of the copy of the restraining order?
A. On the 23rd.
Q. And at that time your check had not been paid?
A. No, sir.
Q. Did you take steps then to stop payment of the check, after you got the copy of the restraining order, and the notice that you were restrained from paying it?
A. I have stated that I did not believe the bank would pay it——
Q. You did not take any steps to stop the payment of it in obedience to the injunction?
A. I don't know. I had some checks out,——
Q. Mr. Norman, I am asking you if you did take any steps after these orders were received by you?
A. The check had been received before the order had been received.

41 Q. Mr. Norman, that is not the question. The question is if you took any steps to stop the payment of that check? Did you or did you not instruct the bank not to pay that check?
A. No, sir, I don't know as I did.
Q. If you had taken any you would have known it wouldn't you?
A. I had no understanding with *with* the bank not to pay it. I did not, no sir.
Q. Are you sure that you took no steps to stop the payment by the bank of that check after you were served with this restraining order.
A. No, sir, I did not.

42 Mrs. BEULAH SCHWEER, on oath being by the referee first duly sworn deposes and testifies as follows:—

Direct examination by Mr. GEORGE B. PUGH:

Q. Mrs. Schweer please state your name, age and residence?
A. My name is Beulah Schweer, I live at Portland, Ark. That is my residence now.
Q. How long have you resided at Portland?
A. All my life.
Q. How long is that?
A. Twenty-four years, except a short time when I lived at Montrose.
Q. You are the wife of G. H. Schweer?
A. Yes, sir.
Q. Mr. Norman testified Mrs. Schweer that you turned over to him $2,000 about the first of December I believe, or the last of November, is that so?

A. Yes, sir, I did. I don't remember the date.
Q. Where is that money now?
A. Why I have a check in my possession for it.
Q. You have a check for it?
A. Yes, sir.
Q. Whose check is it?
A. Mr. Norman's.
Q. What bank is it drawn on?
A. The Ashley County bank,—Hamburg bank.
Q. When did you get that check?
A. Why the morning of the 19th, about 11 o'clock—it was about 11.30 that I got it out of the post-office on the morning of the 20th.
Q. Was there a letter accompanying it?
A. Yes, sir.
Q. Have you that letter?
A. No, sir. It was laying on the bed, I was in bed sick when the letter was brung in I read it and stuck it in the fire. Mr.
43 Schweer was asking me the other day if I had it. Just as soon as I read the letter I burned it up.
Q. Was this $2,000 you gave Mr. Norman all in currency or was part of it in checks and drafts?
A. Part of it was checks. Railroad checks.
Q. What kind of railroad checks?
A. I have no idea, well they were time checks.
Q. What amount of railroad checks did you have?
A. I have no idea.
Q. You say you have no idea of what amount of railroad checks you gave him?
A. No, sir. $500 or $600 perhaps. I don't remember. I wouldn't undertake to say because I don't know.
Q. Didn't you make a list of the checks and count them,—add them up?
A. No, sir. Well, I may have but I don't remember. I may have known at the time but I can't say positively now. There may have been $500, $600 or $700 in checks, The checks were some I got about the first of November I believe. Well no, I am mistaken about that, it was the last pay day, the 18th. or 19th. of November.
Q. Were there any checks there of large denominations?
A. No, sir, most of them were small like. They were just what was used in paying off the railroad hands. There was two or three gangs there every month, and they would come in and pay Mr. Schweer—that is come to me to cash their checks and I had this money of mine and I would cash the checks so that they would have money to spend in the store.
Q. That was at Montrose?
A. Yes, sir, at Montrose. I moved down to Portland the first of November. I believe Mr. Schweer failed on the 22nd of November.
Q. Do you remember the names of the parties that you cashed checks for?

A. Yes, sir, some of them were I believe—I don't remem-
44 ber either Some of them were negroes from Morrell station and scattering around that were sent to Montrose. There was three section gangs. I don't know whether I can think of any of their names or not.

Q. You did not cash the checks for the agents at Montrose. Were any of them white people or all negroes?

A. I don't know. I wouldn't say they were all negroes. There may have been some of them whites. No, now that I think of it all the section foremen of those three gangs were black. I don't remember I may have cashed a check for Mr. Lynch, but I don't remember.

Q. Do you remember the number of checks that you had?

A. No, sir, I do not.

Q. Did you give Mr. Norman all the checks that you had?

A. Yes, sir, I think I did. I believe I did.

Q. You do not remember keeping back any checks?

A. No, sir, I do not.

Q. You gave him all the checks that you had, and that you had counted up in the first place, and made up the balance of the $2,000 with currency?

A. Yes, sir.

Q. Was there any greenback or silver?

A. No, sir, no silver at all. Well there might have been one dollar in silver. I believe there was.

Q. You got these checks at the pay day in November?

A. Some. Not all of them. I did not say that I got all of them. I had some in for some other months before that. I do not know just what times.

Q. You do not remember to have had any checks there for the month before, you had collected them?

A. Oh, yes I may have held some over from the month before because they were good anytime. I would just as soon had them as money, as most of them were on the Hamburg road.

Q. Where did you keep that money?

45 A. In my trunk.

Q. In your room?

A. Yes, sir, in my room.

Q. The parties would come in there and get their checks cashed, where would you receive them?

A. In my room sometimes and in the store sometimes.

Q. Wasn't this the first batch of checks that you ever cashed?

A. No, sir.

Q. Had that been a custom of yours for sometime?

A. No, sir, not all the time; no, sir because— No I did not say that I cashed them all in November at all. Some of them may have been in November; I don't remember now.

Q. You did not pay much attention to the business?

A. Why yes, I did that because I was interested in it. I knew

that if the checks were cashed the money would be spent in the store. That is the reason I cashed them. The most of all the hands were negroes; in fact most all of them were. They traded there with Mr. Schweer and when they got their checks cashed they paid him.

Q. On this particular occasion they must have had several hundred dollars' worth of checks cashed the same day?

A. Oh, no.

Q. They were not?

A. Well you see some of them would come right in for the particular purpose of getting their check cashed?

Q. You mean that they had already received their checks?

A. Yes, sir and they would come in at different times. The two roads paid off at different times too.

Q. Most of them brought their checks there and had them cashed through you?

A. Yes, sir, got their money.

Q. At the pay day in November how many of these checks did you cash for them the day the pay car was there?

A. I don't remember. I wouldn't undertake to say.

Q. By far the majority of them then that you had were
46 cashed on that day were they not?

A. I don't know. I don't remember the exact date at all, or the time I was down there at all.

Q. When did you leave Montrose and go to Portland?

A. The first day of November I moved down there.

Q. The first day of November?

A. I wouldn't be positive. I don't know. I don't remember just the date now.

Q. How long was it before this pay day that you spoke of that you moved away from there?

A. Well the pay days were about the 18th or 19th of the month, somewhere along there. I don't know the exact date of the pay day.

Q. You moved away about the first and about the pay day after in November that came was when you cashed the checks?

A. I am mistaken about cashing the checks in November, some of them I cashed in October. I don't know. I can't remember. I don't remember the exact day I moved, but I know the next pay day I cashed them, whatever time it was.

Q. Where did you get this cash or money from the day you cashed these checks?

A. Got it out of my trunk.

Q. How much did you have in your trunk?

A. About $2,500.

Q. How long did you have it in there?

A. I had $1,500 a little over two years; since soon after I married Mr. Schweer, then he gave me $1,500. But then I won't swear

to a cent how much else I had. He gave me money at different times, some $800 or $1,000 more.

(By Mr. MYERS:) You said it was your money. You must state where you got it from Mrs. Schweer?

A. Mr. Schweer gave it to me of course.

(By Mr. PUGH, continuing:)

Q. He gave it all to you but it was at different times though?

47 (Exceptions to question by counsel.)

A. Yes, sir, he gave me the $1,500.00 shortly after we were married.

(By Mr. PUGH, continuing:)

Q. How long did you say you had had the $1,500, Mrs. Schweer?

A. I said I had had it ever since—well I had had it over two years.

Q. Over two years?

A. Yes, sir.

Q. How long have you been married?

A. Three years the eighth of October.

Q. About a year after you were married you got the $1,500?

A. No, sir, less than a year.

Q. What was Mr. Schweer's business when you lived at Portland?

A. Mr. Schweer was the agent there.

Q. What was the form in which you got the money, was it greenbacks or notes or checks or silver or what?

(Counsel for the bankrupt objects to the foregoing question; objections overruled and exceptions saved.)

A. It was given to me in silver and greenbacks of course.

Q. Where did you put it when you got it?

A. I took care of it I had a place.

Q. Did you put it in a bank anywhere?

A. No, sir, never had put it in a bank.

Q. You never did have a cent of it in a bank?

A. No, sir.

Q. He never invested any of it for you?

A. No, sir. I didn't have any money to amount to anything——

Q. This $1,500, did you get the $1,500 all at one time?

A. Yes, sir.

Q. And you kept it and added to it until you got nearly $2,500?

A. Yes, sir, only I don't state positively that I had that much because I can't say.

Q. When did you have $2,500?

A. Why I didn't say I had any $2,500 to the cent; only I
48 was just judging that Mr. Schweer had given me about $1,000 of what he had made there at Montrose; I had possibly $2,500 or $2,300 but I did not state that I had $2,500.

Q. That was before he went into business?
A. Yes, sir.
Q. He never gave you any more money after he went into business at Montrose?
A. No, sir, not to amount to anything.
Q. You never got anything worth speaking of after that?
A. No, sir, not to amount to anything.
Q. Where did you get this $2,500,—where did you keep it after you went to Montrose?
A. I was always mighty secure where I kept it. It was in my possession.
Q. You have the balance now over this $2,000?
A. Not all of it.
Q. You have the balance now have you?
A. I have part of it, and I have a check for $2,000.
Q. How much have you?
A. I don't suppose I have over $75, or $100, outside of the check of $2,000. These trips up to Little Rock cost money.
Q. Please tell the court where you kept the money at Montrose?
A. In my trunk.
Q. All the time you were at Montrose you kept the money in your trunk?
A. Yes, sir, I did.
Q. You never invested it after you went to Montrose in anything?
A. No, sir, I did not.
Q. You never did loan it to Mr. Schweer?
A. I did not; no, sir. He never did ask me for it. He may have used a little portion of it. But not to amount to anything.
Q. He knew you had it?
A. Yes, sir, of course he did for he gave it to me.
49 Q. He knew that if he wanted it at any time, or wanted it to use at any time he could have it?
A. It was mine though.
Q. He never wanted it?
A. It was mine though.
Q. He never wanted it?
A. No, sir.
Q. When you turned this money over to Mr. Norman you turned it over to him for the use and benefit of Mr. Schweer didn't you?

(Counsel for bankrupt objects to foregoing question; objections overruled and exceptions saved.)

A. I turned it over to him to keep him out of jail of course.
Q. Turned it over to Mr. Norman?
A. Yes, sir.
Q. You mean by that that you turned it over to him to be used for Mr. Schweer's benefit?

(Objected to by counsel for bankrupt, objections overruled and exceptions saved.)

A. No, I meant it was to be used to make that bond so that he would not be put in jail. I did not expect it to be used any other way than that.

Q. Where were you when you handed him this money?

A. In my room at mother's.

Q. Who else was present?

A. Mr. Schweer and Mr. Norman and myself; that is all that was present.

Q. Did Mr. Schweer see you hand the money to Mr. Norman?

A. Yes, sir.

Q. Who handed it to him you or Mr. Schweer?

A. I did myself.

Q. Who counted the money for you?

A. Mr. Schweer and me together counted it. And then I handed it to Mr. Norman and told him to count it and he said no, I suppose it is counted correctly.

50 Q. Where does your mother live?

A. At Parkdale.

Q. Please give her name?

A. Mrs. Jennie Maxwell.

Q. How far is it from Portland to Parkdale?

A. I suppose it is about nine miles.

Q. And how far from Montrose?

A. About thirteen I guess.

Q. Did you visit at Parkdale right frequently while you were at Portland and Montrose?

A. Yes, sir, quite frequently; every week nearly.

Q. Did your mother know that you had this money during that time?

(Counsel for bankrupt objects to foregoing question as being incompetent and irrelevant. Objections overruled and exceptions saved.)

A. During what time?

Q. All the time that you had it?

A. She knew that I had some money; but she couldn't say how much.

Q. She did not know that Mr. Schweer gave you this $1,500 did she?

A. I suppose she did.

Q. Did you know it at the time he gave it to you?

A. I don't know just at the time; I may have told her about it.

Q. Did anybody else know of your having this money except yourself?

A. Nobody else?

Q. I believe you stated that your mother knew it?

A. Yes, sir.

Q. Didn't you tell her about having this money, and just what amount of money you had about this time?

(Counsel for bankrupt objects to foregoing question as being incompetent and ir-elevant; objections overruled and exceptions saved.)

A. I may have; yes sir.

Q. Don't you remember whether you did or not?

A. I don't remember; no, sir. I am on my oath now.

51 Q. You say that nobody else knew anything about it but yourself and your mother?

A. No, sir, nobody else.

Q. You have no sisters or brother?

A. I have a sister, but I wouldn't be apt to run about and tell anybody and everybody that I had money in my trunk; they might rob me at Montrose, it was dangerous.

Q. How did you take the money to Parkdale, you say you gave it to Mr. Norman at Parkdale?

A. I didn't take it in my trunk.

Q. You didn't take it in your trunk?

A. No, sir, because I shipped my trunk.

Q. You took it along with you?

A. I did, yes, sir.

Q. When you came up to Montrose to cash these checks did you bring the money back with you from Portland then?

A. I didn't use all of it.

Q. How much did you bring along with you to cash checks with?

A. I don't remember at all. I don't remember the amount of checks I cashed. I do not exactly, because I did not have anytime. Would just come up there and stay a day or two.

Q. Where did you stay?

A. I staid at his room there. Just after I moved away when I came back, for I left Mr. Schweer a room furnished. I came back several times.

Q. Each time you brought money along with you to cash checks did you?

A. No, sir, not each time.

Q. Well, just one time or more than once?

A. May have been once I believe, because I left there near the first of the month and he left there along about the last of the month, and I think there was only one pay day. I don't know either now; there was two roads there to pay off and they paid off at different times.

52 Q. Can you tell what made you go back there to Montrose if it was not to cash these checks?

A. No, sir nothing special.

Q. You just happened to go?

A. Well I just went back there to visit him, as I said before.

Q. How did you happen to carry so much money along with you?

A. I didn't say I carried it all.

Q. No, you said you carried enough to cash the checks; how did you happen to carry so much along with you?
A. I thought it was necessary.
Q. You say that you have the check that Mr. Norman gave you in your possession now?
A. No, sir, I have not.
Q. Where is it now?
A. Haven't got it now.
Q. Where is it now?

(Counsel for bankrupt objects to question as being irrelevant and incompetent; objections overruled and exceptions saved.)

A. I have it at Parkdale in my room.
Q. In your custody; under your control.
A. Yes, sir, under my control.
Q. You have never transferred or assigned it to anyone?
A. No, sir, I have not.
Q. Who did you leave it with when you left there?

(Question objected to by counsel for bankrupt; for same reasons as above stated; objections overruled and exceptions saved.)

A. Well, sir, I left it in my mother's care. I left it — her house.
Q. Did you leave it in any persons hands?
A. No, sir, in no person's hands at all.
Q. Your mother is not here with you?
A. No sir she is at home.
Q. When were you out at Hamburg Mrs. Schweer?
53 A. Monday and I came back Tuesday.
Q. You had that check in your possession then did you?
A. I did, yes, sir.
Q. It was drawn on the Hamburg bank?
A. Ashley county bank.
Q. Why didn't you present that check then and have it cashed?

(Counsel for bankrupt objects to foregoing question as being incompetent and irrelevant; objections overruled and exceptions saved.)

A. Well I went out there to see Mr. Norman. I heard that there was some—well I knew you was all trying to get it in your possession and I wanted to see about it; and when I got there—well I knew I could get it anytime I wanted it so I didn't present it.
Q. Did Mr. Norman say to you not to present it?
A. No, sir, he said I could have it if I wanted it; that the bank would pay me if I wanted it; and so I thought I would just keep it; that it would be just as good as the money any time.
Q. Mrs. Schweer, did you not demand the money of Mr. Norman directly about this time?
A. Why I told him once or wrote him when it was convenient he

could bring it over to Montrose and I would meet him there and get it.

Q. Was that the only time you ever demanded it of him?

A. Yes, sir, just one time.

Q. That was about a month ago wasn't it?

A. I tell you when it was; it was during court; Mr. Schweer was in Hamburg at court at the time. I don't remember the date.

Q. Mrs. Schweer will you tell the court the names of some of the parties to whom these checks were made payable that you gave to Mr. Norman?

A. Well, I stated that they were mostly negroes and I don't know. I don't remember a name. I knew their faces for they would come into the store there a great deal to trade but I don't remem-
54 ber the names.

Q. Don't you remember any of them?

A. No, sir, I don't know as I do.

Q. You had not much dealings with them in the way of cashing checks for them?

A. None but cashing checks.

Q. But you had not had much dealings of this sort else you would have known their names. You had not cashed checks much for them before this?

A. Yes, sir, several times.

Q. Yet you do not know the name of a single one of them?

A. I can't remember a name right now. I am sure I cashed the checks though, but I don't remember the name.

Q. You are sure it was along about the 18th or 20th of November are you?

A. No, sir, not all of them.

Q. They were bought after the pay car was there in November?

A. No, sir, not all of them after that pay car was there.

Q. Practically all of them I believe you stated was?

A. No, I don't remember saying that. I said at different times.

Q. Didn't you say here at first that you cashed practically all of them about the pay day in November or afterwards?

A. I don't remember that I did. If I did I don't remember it now.

Q. When Mr. Schweer bought out McBride there at Montrose he bought him out principally on credit didn't he?

(Question objected to by counsel for bankrupt, and question withdrawn by attorneys for trustee.)

Q. You stated I believe Mrs. Schweer that you did not get any of this money until after Mr. Schweer started in business there at Montrose?

55 A. Not to amount to anything I said. But he gave me money along as I needed it.

Q. But you was not adding anything to your savings?

A. Not to amount to anything.

Q. What you taken with you when you went to Montrose you took from Portland,—$1,500 or more did you?
A. Not more, no, sir, I took nearly that much. I may have spent some of it.
Q. Well during the time Mr. Schweer was working there at the station you added something like $1,500 or something like $1,000 to the money that you had did you?
A. Yes, sir.
Q. How long was Mr. Schweer working there at Montrose at the station before he went into the store.
A. From the—I believe the 9th. of July he worked at Montrose and he worked there until the—I do not remember the exact date he bought out Mr. McBride, but believe it was in January.
Q. The following January?
A. Yes, sir.
Q. What salary was he getting, do you know?
A. No, not exactly but no time less that $150 a month, not less than that, and sometimes as much as $200.
Q. About how much money did you get of his wages during the time you were at Montrose?

(Counsel for bankrupt objects to question as being incompetent and irrelevant; objections overruled and exceptions saved.)
(Counsel also instructs witness not to answer question.)
By the COURT: Mr. Myers, you have told the witness several times not to answer questions. Now there is a proper way to get at that. If you have any objections to any questions state your objections.

A. I got what he saved outside of our expenses. I don't
56 remember exactly. I can't state the exact amount. We lived out of his salary and the balance of it was mine.
Q. Well during that time—during that six months you got about $1,000, is that so?

(Counsel for the bankrupt objects to the question as being incompetent and irrelevant. Objections overruled and exceptions saved.)

A. Yes, sir, nearly that much. I don't know exactly.
Q. Mrs. Schweer, can you state the date of your last visit to Montrose before Mr. Schweer's store was closed up?
A. No, sir, I cannot.
Q. Was it on the last visit or the visit before the last that you cashed these checks?
A. Why I don't know. Before the last one I suppose.
Q. The visit before the last one?
A. I suppose so.
Q. Didn't you cash any checks on the last visit at all?
A. I don't remember cashing any.
Q. How long did you stay there on the occasion of the last visit you made to him before the store was closed?

Q. Went down one day and went back the next afternoon.

Q. Can you count back now and say how many days that was before the store was closed up?

A. I can't be positive about the day that he was closed up, but seems to me that it was 22 of November. I don't know the day of the week, but it seems to me that it was Friday.

Q. Can you tell the number of days before that that you were there?

A. I think it was the week before if I am not mistaken.

Q. That was your last visit was it?

A. Yes, sir. I am not positive about the time though. I don't remember the day.

Q. How long was it before that that you had met the hands and the last visit; was it between your last two visits?

57 A. I don't remember that.

Q. Do you remember whether it was a week before your last visit?

A. Why I don't remember at all.

Q. Do you remember how many visits you made him after you went down to Parkdale after the first of November?

A. Not exactly, but three or four visits. I made several visits Perhaps every week. I don't remember. I don't remember how many visits I made him.

Q. Had you been accustomed Mrs. Schweer to cashing these checks when you got them?

(Question objected to as irrelevant and incompetent by counsel for bankrupt.)

By the REFEREE:

Q. Mrs. Schweer, your transactions in relation to the cashing of these checks was -our own business altogether; your husband had nothing to do with it?

A. It was my business, yes, sir.

By Mr. MYERS:

Q. Everything in relation to the checks was your independent business?

A. It was my business.

Q. You say it was your own individual business, and you were not doing it for your husband but for yourself?

A. No, sir, It was all my money.

Q. And it was a separate business?

A. Yes, sir.

Q. Did you ever consult with your husband about it?

A. About what?

Q. About your paying off these checks?

A. Well I don't know that I did. I don't remember.

Q. You don't think you did?

By the REFEREE:

Q. You were paying off these checks so that the negroes would spend their money in the store?

A. Yes, sir, that is what I stated.

By Mr. MYERS: You say that this is not the first batch of
58 checks that you got?

A. Yes, sir, and I said I did not cash them all at one time.

By Mr. PUGH: How did you dispose of the checks that you got previous to this last batch which you turned over to Mr. Norman?

A. Oh, I disposed of them.

Q. How did you dispose of them though?

A. How did I dispose of them?

Q. Yes, what did you do with them. What was your custom when you took up these checks?

A. Put them away in my care.

Q. What did you do with them then?

A. Oh, I would use them; get the money on them.

Q. Who got the money on them for you?

A. I stated that I turned over all the checks. I said I may have some more but I don't know.

(The referee here explains the question to the witness.)

Q. Did you ever cash any checks before you cashed these that you turned over to Mr. Norman?

A. I had, yes, sir.

Q. Other checks besides these that you turned over to Mr. Norman?

A. Yes, sir.

Q. What did you do with these other checks; how would you get the money on them?

A. I got them cashed any time I wanted too. They were as good as the money.

Q. But what was your custom; how did you usually deal with them?

A. Why, Mr. Lynch, the agent, cashed checks there for me the last time.

Q. Mr. Lynch cashed them for you?

A. Yes, sir, I got him too. Almost anybody would cash a railroad check.

Q. I want to know what your custom was in dealing with these checks that you took up; how you got them cashed?

A. Like anybody else got them cashed. I don't know just
59 how to answer that. Different people cashed them. Mr. Lynch and different people cashed them. Railroad checks are good anywhere.

Q. How came you to give Mr. Norman these checks instead of giving him the money?

A. Because they were just the same as money.

Q. Is that the reason?

A. Yes, sir.
Q. Could he get them cashed?
A. You know he could get them cashed.
Q. You would just as soon have given him the money—you had the money, but you knew these were just as good as the money?
A. No, they went to make up the money I had. That was my money the checks was. They went to make up that $2,000.
Q. Where did you get the money from just at the time you gave it to Mr. Norman?
A. I had it in my trunk.
Q. How much other money did you have there at the time?
A. I can't state exactly how much I had.
Q. Didn't you count it when you took out that $2,000?
A. I counted him out $2,000.
Q. Did you have some left in your trunk?
A. Not to amount to anything. I had a little change.
Q. Did you take all of the money out of your trunk when you went to get the $2,000?
A. I said I may have had a little change left.
Q. When you counted it out to Mr. Norman it made just exactly the $2,000?
A. Well, I said I may have had a little more change left there besides the $2,000. I told you I had something near $2,500; did have that much, but haven't got it now.
Q. Where was the other $500.
A. That has been spent. I said I had about $500 altogether; I said I had nearly $2,500 but I have spent some of it.
60 Q. Where was the nearly $2,500?
A. In my trunk what I had.
Q. About what proportion of it was checks?
A. Why I don't think I had more of it in checks.
Q. How much of it was in silver?
A. I don't suppose I had—I don't remember exactly. I never counted it.
Q. You never counted it?
A. No, sir; I had some little change left.
Q. How came you to give this money to Mr. Norman, did he propose it to you or did you propose it to him?

(Objected to by counsel for bankrupt; objections sustained, and exceptions to ruling of referee saved.)

Q. Mrs. Schweer didn't you tell Mr. —— at Parkdale that you had turned over $2,000 of Mr. Schweer's money to Mr. Norman, and that you were going to make Mr. Norman give it back to you?
A. I did not.
Q. Didn't you tell Mr. McBride that?
A. I did not.
Q. Didn't you tell J. C. Brown, the trustee in this case, that you

had turned over all of Mr. Schweer's money that you had to Mr. Norman and that he had gotten more out of it than anybody else?
A. I did not.
Q. You had a conversation with Mr. Brown about this matter when he was down there didn't you?
A. He had a conversation with me but I didn't say anything to him that would amount to anything. Yes, sir, I did have a conversation with him. He did the talking though.
Q. Didn't you tell him that Mr. Norman had gotten more money out of this than anybody else?
A. I did not. He examined me thinking he could get me to say something but I didn't.

61 Cross-examination.

By Mr. MYERS:

Q. I am under the impression that Mrs. Schweer testified that that $2,000 that she turned over to Mr. Norman was her individual money. Am I correct about that Mrs. Schweer?
A. Yes, sir.

By Mr. NORMAN:

—. How long has it been in your possession?
A. I said that a part of it had been in my possession about two years,—soon after I was married to Mr. Schweer. I have the principal part of it for over two years
Q. And the other you have saved since then?
A. Yes, sir.

By Mr. PUGH:

Q. You say that it had all been in your possession over two years?
A. I did not say all of it, no, sir. Well I said this——
Q. (Question repeated to witness)
A. Yes, sir.

By the REFEREE:

Q. Mrs. Schweer you made no profit on these time checks?
A. No, sir, but I knew if I cashed them the store would get the benefit of the money.
Q. So the money would be spent in the store and saloon?
A. Yes, sir.
Q. That was your purpose?
A. Yes, sir.
Q. When you came to Montrose to get these time checks—cash them. Who sent you word that they were there—what people were there that had time checks that the- wanted to get cashed.
62 A. Who sent me word of it?
Q. How did you ascertain that?

A. I always knew when pay-day came.

Q. They paid in cash didn't they?

A. They would give checks. They would give them time checks, and they had to get them cashed wherever they could.

Q. Is it not a fact that they paid cash when they came along with the pay car?

A. No, sir, always pay in checks. I suppose they always did, I don't know.

Q. And were these the checks you were dealing in?

A. Railroad checks, yes, sir.

Q. Who were they signed by?

A. Some of them by the general superintendent on the Hamburg road and the other by the other superintendent on the main road.

Q. Were they bank checks?

A. No, sir, railroad checks. I don't know; I don't understand the checks.

Q. Now Mrs. Schweer, did you ever work in your husband's store there?

A. He never hired me. I have gone down there to work around some—help out, but I was not really hired of course.

Q. Was there much of the time that you did that?

A. No, sir, not a great deal.

Q. Did you ever go to one of the employees there—his clerks or cashiers and get money from any of them?

A. No, sir, whenever I wanted any cash I went to the cash-drawer and got it.

Q. You considered that you had free access to the cash-drawer and any place in the store?

A. Yes, sir.

Q. Did any person besides Mr. Schweer ever give you any money?

A. No, sir.

Q. For him

63 A. No, sir.

Q. No money for him?

A. No, sir.

Q. And the money that you got was given to you by Mr. Schweer and what you took yourself out of the store?

A. No, sir.

Q. Have you been in the habit of going and taking money when you wanted it?

A. Yes, sir I took a little change when I wanted it, but I always put a check in there to show up on the register.

By Mr. PUGH:

Q. Do you and Mr. Schweer own a home anywhere?

A. No, sir, we do not.

Q. Do you own any real estate?

A. No, sir.

64 J. C. NORMAN, being recalled, testifies as follows:

Comes J. C. Norman and asks to amend his testimony heretofore given in this case to day by the following statement. In answer to the question of the referee in regard to stopping the payment of the check he says:

A. Since reflecting about the matter I remember now that as soon as I got to Hamburg I called up the cashier of the bank and told him not to pay the check unless I had the funds in there. I did not stop the payment, unless I just did it in that qualified way.

(Endorsed:) *In re* G. H. Schweer, bankrupt. Testimony of J. C. Norman and Mrs. Beulah Schweer. Filed August 17, 1903 (Signed) P. C. Dooley, referee. Filed Oct. 2. 1903. (Signed) Sid. B. Redding, clerk.

65 G. H. SCHWEER being duly sworn deposes and says.

Q. State your name, age and residence?

A. G. H. Schweer, age 30, residence Montrose, Arkansas, occupation merchant.

Q. How long have you resided at Montrose?

A. Since July 1900.

Q. What was your occupation on your locating there and how long did you remain so occupied?

A. I was joint agent for the Iron Mountain and M. R. H. & W. Ry. Co. until Jan. 11th. 1901.

Q. When did you become acquainted with R. J. McBride?

A. I met him at Portland probably six months before I went to Montrose.

Q. Did you live at Portland before you moved to Montrose, if so how long?

A. I lived at Portland from January to July 1900.

Q. Please state what business transactions if any you had with R. J. McBride previous to December 28th. 1900?

A. My business transactions with him were in connection with the railroad, I was figuring with him on a deal during December.

Q. What sort of a deal were you figuring on and how was it consummated and when?

A. We were figuring on his general merchandise, saloon and restaurant. I bought a half interest in the business consisting of store, saloon and restaurant on the 28th. December, 1900.

Q. How much did you give McBride for the ½ interest in the business and how was the same paid, if it was paid and when?

A. I gave him $2752.80 for a half interest in the business. On December 28th. I gave him a check for $1000.00 on Portland bank, in first of January I gave him check for $677.75. I paid him between January 1st and January 15th. 1901 at different times in cash $855.70, and at different times in merchandise $41.64.

Q. How long did you continue in partnership with R. J. McBride?

66 A. Until January 15th, 1901.

Q. When did you first learn of his insolvent condition?

A. I first learned about the time that he got married. I don't remember the date I think it was next day some one from Portland told me about it.

Q. Did you inquire into or make any investigation as to his indebtedness before you bought a half interest in his business?

A. I made no inquiries or I didn't investigate it Mr. McBride told me he had a few debts but that he could take care of these himself.

Q. Did you make any investigations or inquiries during the continuance of your partnership, if so what?

A. No, sir, I made none.

Q. Did not several of his creditors come to the store and make demand upon you or upon him in your presence for payments on their debts during this time?

A. There was no demands made on me. If they made any demands on McBride it was private and not in my presence.

Q. What was the style of your firm during that time?

A. It was run in R. J. McBride's name. I had no rating I bought goods in his name.

Q. Were not several orders made by you during this time turned down on account of McBride's insolvency?

A. I ordered one time and didn't get the goods. I don't know why I don't remember from whom I ordered.

Q. Did you not make an order in McBride's name during this time from the Russell Grocery Company at Pine Bluff Arkansas and did they not write to you that on account of McBride's insolvency or indebtedness they would not ship the goods, and did you not reply to that letter?

A. There was an order given to some grocery company but I don't remember the name. If I answered any letter I don't remember now.

Q. During this time did you open the mail which come to

67 the store addressed to R. J. McBride, if not when you ordered goods in his name how did you expect to hear from your orders?

A. There was a few letters opened in fact I knew they were in regard to goods I had ordered.

Q. Did you order goods from the same parties from whom he had been ordering?

A. I don't know.

Q. You never did make any mistake and open a letter in which he was being dunned did you?

A. I never did open any letters where he received duns, to my knowledge.

Q. What become of this money which you said you paid McBride?

A. I do not know.
Q. You made no attempt to see that it was applied to the payment of his debts did you?
A. I made no attempts to do that.
Q. What was done with the proceeds of the business during the continuance of the partnership?
A. I used most all of it to pay him probably all of it most of it anyway.
Q. What was the amount of the proceeds of the business during that time?
A. I don't remember the amount now.
Q. Have you books from which you can tell?
A. I probably could.
Q. Who had control of the business during this time?
A. I did.
Q. How was this partnership disposed of or dissolved?
A. January 15th he told me he wanted to sell me the balance of his interest that he wanted to get married and he had to get out of the saloon business to get married and I had figured on the stock and found that he had marked his goods 10 % above the original cost of freight and I told him that if he would discount it
68 10 % I would take his interest we took no new inventory and I bought on the original inventory with 10 % off.
Q. How much did you give him for the remaining ½ interest?
A. $2502.80.
Q. How was this amount paid and when?
A. I gave him a $1,000 cash on January 15th and the balance in three notes two for $500 each and one for $502.80 the dates of the notes were January 15 1901 due September the 1st. 1901 bearing interest from date I think at 8 %.
Q. What has become of these notes if you know?
A. On Feb'y 1st. I discounted two of them for $950.00 cash and the other I discounted for $477.80 later on I don't remember the date I discounted it for Mr. J. C. Norman.
Q. To whom did you pay the $950.00 for the other two.
A. To Mr. McBride.
Q. Did you make any effort to see that the money you paid McBride on the purchase of the last ½ interest was applied to the payment — his debts?
A. I made no effort I didn't know that he owed any then I thought he was in pretty good shape myself.
Q. Did you have access during your partnership with McBride to his books?
A. He kept his books in a private room I never did go in his room unless he was in there he never showed me his books.
Q. What become of his books after you bought the second half interest?
A. I don't know.
Q. You made no effort from start to finish to ascertain anything

about McBride's indebtedness either from his books, himself, or anyone else

A. I made no effort. I asked him at the start he said he had very few debts he said he could take care of them himself and his business seemed to be prosperous.

(Signed) G. H. SCHWEER.

69 George B. Pugh being duly sworn testifies that as attorney for the trustee of McBride he took the foregoing deposition and that Schweer was sworn before the same was given and that it was written out by the notary and signed by Schweer in the presence of the affiant.

(Signed) GEORGE B. PUGH.

Subscribed and sworn to before me this 2nd day of October 1903.

(Signed) SID. B. REDDING, *Clerk*,
[SEAL.] By W. S. ALLEN, *D. C.*

(Endorsed:) *In re* G. H. S-weer, bankrupt. Deposition of Schweer. Filed August 13th, 1903. (Signed) P. C. Dooley, referee. Filed Oct. 2, 1903. Sid. B. Redding, clerk.

70 STATE OF MISSOURI, } ss:
County of Henry, }

The State of Missouri to J. H. Schweer:

You are hereby commanded, that setting aside all manner of excuse and delay, you be and appear in proper person, before the undersigned notary public at his office in the city of Clinton within and for said county on Wednesday the third day of June A. D. 1903, then and there to testify the truth to speak in a certain matter of controversy now pending in the United States district court for the western division of the eastern district of Arkansas in the matter of G. H. Schweer, bankrupt on the part of J. C. Brown, trustee, and this you will in nowise omit. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Witness my hand and the seal of office. Done at Clinton
[SEAL.] in said county this 28th. day of May, A. D. 1903.

(Signed) HARRY L. HUNTER,
Notary Public.

(Endorsed:) Return. I hereby certify that I served the within writ in the county of Henry in the State of Missouri on the 29th. day of May 1903, by delivering a copy to J. H. Schweer in person. Fee $.50c. (Signed) F. F. Wallz.

71 In the United States District Court for the Western Division of the Eastern District of Arkansas.

In re G. H. SCHWEER, Bankrupt.

Notice to Take Depositions.

To G. H. Schweer and to H. H. Myers, his attorney:

You are hereby notified that the depositions of witnesses to be read in evidence on behalf of the estate of the bankrupt as to the acts conduct and property of the bankrupt, will be taken at the office of Hunter & Co., on the second floor of the Salmon & Salmon Bank building on the northeast corner of the public square in the city of Clinton, Henry county Missouri, on Tuesday the 26th day of May, 1903, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon; and if said depositions are not completed on that day the taking thereof will be continued from day to day until completed.

(Signed) J. C. BROWN, *Trustee*,
By PUGH & WILEY, *Attorney*.

Service of above notice accepted this 13th day of May 1903.

(Signed) H. H. MYERS, *Attorney*.

72 In the United States District Court for the Western Division of the Eastern District of Arkansas.

In re G. H. SCHWEER, Bankrupt.

Deposition of witness produced, sworn, and examined on the 26th day of May in the year of our Lord 1903, between the hours of eight o'clock in the forenoon and 6 o'clock in the afternoon of that day, at the office of Hunter & Company, on the second floor of the Salmon & Salmon Bank building, on the northeast corner of the public square in the city of Clinton, Henry county, Missouri, before me, Harry L. Hunter, a notary public within and for the said county and State, in a certain cause now pending in the United States district court for the western division of the eastern district of Arkansas, in the matter of G. H. Schweer, bankrupt, on the part of the estate of the bankrupt.

C. A. Calvird, attorney for J. C. Brown, trustee of the estate of said bankrupt, appeared on behalf of said estate and said trustee. And it appearing to the notary that J. H. Schweer who was duly and legally notified to appear and give evidence in said matter above mentioned could not attend and give his deposition on this date,

the further taking of said deposition is hereby ordered continued until Wednesday the 3rd day of June 1903.

[SEAL.] (Signed) HARRY L. HUNTER,
Notary Public.

Now on this day the 3rd day of June, 1903, before me, in pursuance of said adjournment above mentioned, appeared J. H. SCHWEER the witness above named, who being duly sworn and examined on the part of the said estate of the bankrupt deposeth and says.

Inter-ogatory # 1. State your name, occupation and residence?

Answer. My name is J. H. Schweer. Age 41 years. Occupation, merchant and assistant cashier of Bank of Blairstown, residence, Blairstown, Missouri.

Interrogatory # 2. What relation are you to G. H. Schweer of Parkdale, Arkansas?

Ans. Brother.

73 Int. 3. What was your father's name and where and when did he die?

Ans. John H. Schweer. Died in Blairstown, Mo. Jan'y 24th 1899.

Int. 4. How many children survived him and what were their names?

Ans. Nine children. Their names were, Mrs. Eliza Hennecke, Mrs. Emma Stieneker, Mrs. Carrie Martin, G. W. Schweer, J. H. Schweer, J. W. Schweer, Mrs. Kate Farrar, H. A. Schweer and G. H. Schweer.

Int. 5. What was the value of the estate left by your father and of what did it consist?

Ans. About $16,000,00. consisting of money, notes, bonds and lands.

Int. 6. Did he leave a will or die intestate?

Ans. Died intestate.

Int. 7. How and when was the estate divided and who had charge of it after his death until it was divided.

Ans. My father died in January, and in March all of the children and the widow met on the old homestead in Franklin county Missouri, and we divided up the estate. Each child received $1,500.00 in money or land and our mother, the widow, the balance. Our mother afterward died and each of the children received from her estate. $187.00 and there still remains a house and lot in Blairstown, Mo. worth about $800.00.

Int. 8. How much did G. H. Schweer get from said estate and when and how was it transmitted to him and by whom?

Ans. He received $1,500.00 at the division above named in Franklin county, which he afterwards cashed, and also $187,00 from my mother's estate about July 1902. I sent him the money.

Int. 9. What part of said estate is left undivided now, and what interest has G. H. Schweer in the same?

Ans. The house and lot in Blairstown, Mo. above mentioned. He virtually has no interest in it as he owes me about the value of his interest in the property, and I expect to satisfy my debt out of his part of the property. I have had this power of attorney since 1899.

Int. 10. What is the interest of G. H. Schweer in the re-
74 maining portion of said estate worth?

Ans. It would be one ninth of $800.00, subject to my claim.

Int. 12. If you remitted to G. H. Schweer his part of his father's estate, state the amount you remitted at the several times and in what manner, and at what place it was sent to him?

Ans. At the time of my father's death, I owed him more than my part of the estate and at the time of the division in Franklin county, I gave G. H. Schweer, my note for his part of the estate. I paid him this note about the time he commenced business at Montrose, Arkansas. I don't remember the date. He drew on me for the amount of the note by sight draft, with note attached and I paid it through the Bank of Blairstown Mo.

Int. 13. If you have any letters written to you by G. H. Schweer during the year 1899, please attach them to your deposition. If you haven't them now please state what has become of them.

Ans. I remember to have received one letter from him in 1899 in response to my notification to meet us in Franklin county, stating that he would be there. I haven't the letter now and I don't know what has become of it.

Int. 14. Have you any letters from G. H. Schweer written about the time you sent him his part of your father's estate?

Ans. I have not. I never received any.

Int. 15. State what you know about your father sending G. H. Schweer any money during 1898 or 1899. State when and how much was sent to him, when it was sent how it happened to be given to him by his father at that time, if you know.

Ans. I have no knowledge of his having given him any money during these two years.

Int. 16. Have you received any letters from G. H. Schweer since Nov. 1st 1902, if so attach them to your deposition. If you have destroyed them state why you did so.

Ans. I received one, but I haven't the letter now. It was a letter asking me and my brother to sign an appeal bond from some
75 order or finding of the United States court in Arkansas. I destroyed it because it is my custom to do so after getting letters of this kind.

Int. 17. Have you received any money or other thing of value from G. H. Schweer since August 1st. 1902, by purchase, gift or otherwise, if so state in what manner and how much, and what it was.

Ans. I have received nothing whatever from him.

Int. 18. Have you any money or thing of value belonging to the

said G. H. Schweer in your possession or under your control now, if so state what it is and when and how you got it.

Ans. I have nothing in my possession belonging to him. And know of nothing except his interest in the house and lot at Blairstown.

Int. 19. When did you last see George H. Schweer, and where was he at the time?

Ans. I saw him the latter part of March or the first of April 1899 at Blairstown, Mo. This was shortly after the division of the estate at Franklin county, Mo.

Int. 20. Did you receive any letters from G. H. Schweer about the time he was married? If so attach them to your deposition.

Ans. I don't remember of having received any.

Int. 21. When did G. H. Schweer leave home and start to work for himself, and where did he start to work and in what capacity. If you learned from him what salary he received, state what it was.

Ans. He left home about ten or twelve years ago. I can't remember exactly. He followed railroading in capacity of agent and operator most all the time. I think he started in at a salary of $40. to $50 per month, but understand he was getting about $125 to $150 per month when he quit. But I don't remember how I heard this. I don't remember to have talked with him about it.

76 Int. 22. Did you ever have any interest in the business at Montrose, conducted by G. H. Schweer? If so what interest and what became of it.

Ans. I had no interest there whatever.

Int. 23. Have you lent G. H. Schweer any money within the last three years? If so how much and when.

Ans. I did not lend him any money, but hold a claim against him as above stated which was for money paid by me to an attorney at Clinton, Mo. for services and expenses in behalf of my brother in January 1903.

(Signed) J. H. SCHWEER.

Subscribed and sworn to at the place and between the hours and on the date aforesaid.

[SEAL.] (Signed) HARRY L. HUNTER,
Notary Public.

77 STATE OF MISSOURI, } ss:
County of Henry, }

I, Harry L. Hunter, a notary public, within and for the county of Henry and State of Missouri, do certify that in pursuance of the annexed notice, came before me at the office of Hunter & Company, in the second story of the Salmon & Salmon Bank building on the northeast corner of the public square in the city of Clinton, Henry county, Missouri, J. H. Schweer who was by me sworn to testify the *the* whole truth of his knowledge touching the controversy afore-

said; that he was examined, and his examination reduced to writing, and subscribed by him, in my presence, on the day, between the hours, at the place, in that behalf last aforesaid, and his said deposition is now herewith returned. I certify that the said J. H. Schweer is a resident of the county of Henry and State of Missouri.

Given under my hand and notarial seal, at Clinton, in
[SEAL.] the county of Henry and State of Missouri, this 3rd. day of June, A. D. 1903.

HARRY L. HUNTER,
Notary Public.

Certificate of Official Character of Harry L. Hunter.

STATE OF MISSOURI, } ss:
County of Henry, }

I, H. A. Stewart clerk of the county court of the county and State aforesaid, do hereby certify that it appears of record in my office, pursuant to law, that Harry L. Hunter is a notary public in and for said county, duly qualified to act as such; that his term of office commenced on the 9th. day of January in the year 1902, and will expire on the 9th. day of January 1906, and that his signature on the instrument hereto annexed is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office this 3rd. day of June 1903.

[SEAL.] (Signed) H. A. STEWART, *Clerk.*

78 (Endorsed:) Deposition of J. H. Schweer. *In re* G. H. Schweer, bankrupt. In the United States district court for the western division of the eastern district of Arkansas. Filed August 18th. 1903. P. C. Dooley, referee. Filed Oct. 2. 1903. Sid. B. Redding, clerk.

79 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

In the Matter of GEORGE H. SCHWEER, Bankrupt.

Memorandum of Opinion.

This is a petition to review the findings and orders made by the referee in bankruptcy, directing J. C. Norman and Beulah Schweer to pay over to the trustee of the bankrupt's estate the sum of two thousand dollars found to be in their possession and belonging to the estate of the bankrupt. In view of the earnestness with which counsel for the parties have attacked the findings of fact, as well as conclusions of law, of the referee, I have carefully gone over the

testimony and considered the case as if it was tried *de novo* before me, without giving that weight to the findings of the referee that, under the law, they are entitled to.

The conclusions reached by me are, that after the adjudication of the bankrupt, J. C. Brown was elected as trustee of said estate. He thereupon filed, as such trustee, a petition setting up the fact that J. C. Norman had in his possession the sum of two thousand dollars belonging to the estate, which he retained and refused to pay over to the trustee, and asked that he be required to show cause why *why* he should not pay over the money to the trustee. During proceedings a petition was also filed against Beulah Schweer, wife of the bankrupt, alleging that she had several thousand dollars in her possession belonging to the estate and asking that she be required to pay it over. By consent of parties the two petitions were consolidated after they had been duly served with notice and had appeared for examination in response thereto.

80 The facts, as I find them, are that the bankrupt having been arrested upon warrant issued out of the State courts after his adjudication as a bankrupt charging him with the commission of some crime, and being held in the sum of two thousand dollars bail to answer that charge, J. C. Norman procured one Thompson, president of the Citizens' Bank of Little Rock, to sign the bond and he deposited with that bank the sum of two thousand dollars as indemnity, which money has since been returned to Norman, Thompson having been released as bail. This money was received by Norman from Mrs. Schweer, the bankrupt's wife. There can be no doubt from a careful perusal of the testimony that this was the money of the bankrupt and was turned over to his wife shortly before the institution of the bankrupt proceedings and for the purposes of secreting the money and preventing its reaching the trustee in bankruptcy. An order for the bankrupt to pay over a large sum of money having been made heretofore and which is now pending on appeal in the court of appeals. The explanations made by Mrs. Schweer, as well as her husband, are not only unsatisfactory, but the depositions of the bankrupt's brother show conclusively that the money was not received by him at the time he alleges that he received it or presented it to his wife. After the first examination of Norman he sent a check through the mails to Mrs. Schweer for the money. This was his individual check, drawn on the Hamburg bank at Hamburg, Arkansas. He then left the city. The referee in bankruptcy, upon application of the trustee, granted an injunction restraining him from paying this money out or returning it to Mrs. Schweer. Norman was notified by a telegram of the granting of the injunction and a copy of the order was mailed him immediately, and received by him the next day. The check sent to Mrs. Schweer has never been presented by her to the bank for collection and is still in her possession, and the said sum of two thousand dollars is still in the possession of J. C. Norman, who makes no claim

to it in his own right, but only as agent for Mrs. Schweer.
81 There can be no claim of adverse holding in this case within the meaning of the bankruptcy law. If the bankrupt, while insolvent and in contemplation of bankruptcy, turned the money over to his wife, then she holds it as trustee for him and for his bankrupt estate. When Mrs. Schweer turned it over to Mr. Norman for the purpose of securing a bondsman for her husband, who was afterwards discharged from that bond, he held it as a trustee for the true owner, with no interest whatever in it, and such being the case there is no such adverse holding which would require the trustee to institute a plenary suit. A summary proceeding is all that is necessary, provided the parties are notified of the proceedings and given a day in court, in order that it may be ascertained whether the claim of the trustee, that they had money in their possession belonging to the estate holding it in secret trust for the bankrupt is true or not, and that they have a day in court. Mueller *v.* Nugent 184 U. S., Bryan *v.* Bernheimer 181 U. S. 188. In this instance the court agrees with the referee that, from the evidence introduced and especially the testimony of Mrs. Schweer herself, this sum of two thousand dollars was the money of her husband and was only held by her for the purpose of enabling him to defraud his creditors and prevent the trustee in bankruptcy from receiving it.

In view of these facts, the findings of facts as well as the conclusions of law of the referee are approved and an order will be entered directing Beulah Schweer to turn over to the referee within twenty days from this date the check she received from J. C. Norman for the sum of two thousand dollars drawn on the Hamburg bank, Hamburg, Arkansas, and that J. C. Norman pay to the trustee in this case, J. C. Brown the said sum of two thousand dollars within twenty days from this date, and upon the failure of either of the parties to do so they be committed to the custody of the marshal of the United States for the eastern district of Arkansas as being in contempt of court and by him safely kept in the Pulaski
82 county jail until they comply with the order of the court or are released by due process of law.

(Signed) JACOB TRIEBER, *Judge.*

(Endorsed:) Filed October 16th. 1903. (Signed) Sid. B. Redding, clerk.

83 On October 16th, 1903.

In re G. H. Schweer, Bankrupt.

On this day the petition for review of the order of the referee in bankruptcy against J. C. Norman and Beulah Schweer coming on for hearing come J. C. Norman and Beulah Schweer by H. H. Myers their attorney and the trustee in bankruptcy by Pugh & Wiley his attorneys and the court being sufficiently advised doth

sustain the findings of fact and conclusions of law made herein by P. C. Dooley, Esq. the referee in bankruptcy, whereupon it is ordered and adjudged by the court that the said Beulah Schweer, deliver to the referee in bankruptcy P. C. Dooley Esq. the check for $2,000— drawn by J. C. Norman in her favor on the Hamburg Bank of Hamburg, Arkansas within twenty days from this date, and that J. C. Norman pay to J. C. Brown trustee in bankruptcy or into the registry of this court $2,000 within twenty days from this date, and on default of either of said parties to comply with this order, that they be adjudged as in contempt of this court and that they be committed into the custody of the marshal of the United States for this district and by him kept in the Pulaski county Arkansas jail until they comply with this order or until discharged by order of the court.

(Signed) JACOB TRIEBER, *Judge.*

84 In the United States District Court for the Western Division of the Eastern District of Arkansas.

J. C. BROWN, Trustee — G. H. SCHWEER, Bankrupt,
vs.
MRS. BEULAH SCHWEER and JAMES C. NORMAN.
} Petition for Appeal.

To the Honorable Jacob Trieber, judge:

The above named defendants conceiving themselves aggrieved by the order and decree made and entered in the above entitled cause on the 16th. day of October 1903, wherein and whereby it was ordered, adjudged and decreed that these defendants within twenty days from date of said order and decree pay over to J. C. Brown, trustee of G. H. Schweer, bankrupt, the sum of $2,000.00 two thousand dollars alleged and decreed to belong to the estate of the bankrupt, do hereby appeal from said order and decree of October 16th. 1903 to the Supreme Court of the United States, for the reason specified in the assignment of errors filed herein and they pray that this appeal be allowed and that a transcript of the records, papers, and proceedings pertaining to the jurisdiction of this honorable court upon which said order and decree was made, duly authenticated, may be certified to the Supreme Court of the United States.

(Signed) MRS. BEULAH SCHWEER,
JAMES C. NORMAN,
By HARRY H. MYERS,
Solicitor for Defendants.

Appeal allowed and returnable within thirty days and to act as a supersed-as upon the execution of a supersed-as bond of $3,000.00 to be approved by me.

(Signed) JACOB TRIEBER, *Judge.*

85 (Endorsed:) Filed Nov. 7. 1903. (Signed) Sid. B. Redding, clerk.

86 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

J. C. BROWN, Trustee for G. H. SCHWEER, Bankrupt, vs. MRS. BEULAH SCHWEER, JAS. C. NORMAN. } Assignment of Errors.

Come now the defendants Mrs. Beulah Schweer & James C. Norman, by their solicitor Harry H. Myers, and file the following assignment of errors upon which they will rely in the prosecution of their appeal from the decree and order made by this honorable court on the 16th. day of October 1903 in the above entitled cause:

I.

That the United States district court in and for the western division of the eastern district of Arkansas, erred in holding that this court had jurisdiction to try this cause.

II.

That the United States district court in and for the western division of the eastern district of Arkansas, erred in not sustaining the demurrer as to the jurisdiction of this court, interposed by these defendants and plaintiffs in error to the original complaint in said cause.

(Endorsed:) Filed Nov. 7, 1903. (Signed) Sid. B. Redding, clerk.

87 In the United States District Court for the Western Division of the Eastern District of Arkansas.

J. C. BROWN, Trustee of G. H. SCHWEER, Bankrupt, vs. MRS. BEULAH SCHWEER & J. C. NORMAN. }

Know all men by these presents that we Mrs. Beulah Schweer and J. C. Norman, as principals and T. A. Jackson and J. H. Pryor as sureties are held and firmly bound unto J. C. Brown, trustee of G. H. Schweer bankrupt, plaintiff above named in the sum of three thousand dollars, to be paid to the said J. C. Brown, trustee, his successors, executors, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents:

Sealed with our seals and dated the 23rd day of October 1903.

Whereas, the above named defendants, Mrs. Beulah Schweer and J. C. Norman have sued out a writ of error to the United States Supreme Court, to reverse the judgment in the above entitled cause by the district court of the United States for the western division of the eastern district of Arkansas.

Now therefore the condition of this obligation is such that if the above named defendants Mrs. Beulah Schweer & J. C. Norman shall prosecute said writ to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) BEULAH SCHWEER. [SEAL.]
JAS. C. NORMAN. [SEAL.]
T. A. JACKSON. [SEAL.]
J. H. PRYOR, SR. [SEAL.]

Approved—

JACOB TRIEBER, *Judge.*

88 T. A. Jackson, states, that he is a resident of the State of Arkansas and that he is worth six thousand dollars beyond the amount of his debts and has property in this State subject to execution, of the value of six thousand dollars.

(Signed) T. A. JACKSON.

Subscribed and sworn to before me this 29th. day of Oct. 1903.

[SEAL.] (Signed) JAMES B. BUNN,
Notary Public.

J. H. Pryor states, that he is a resident of the State of Arkansas, and that he is worth the sum of six thousand dollars beyond the amount of his debts, and has property in this State subject to execution, of the value of six thousand dollars.

(Signed) J. H. PRYOR, SR.

Subscribed and sworn to before me this 29th. day of Oct. 1903.

[SEAL.] JAMES B. BUNN,
Notary Public.

Endorsed: Filed Nov. 7, 1903. (Signed) Sid. B. Redding, clerk.

89 UNITED STATES OF AMERICA, ss:

To J. C. Brown, trustee — G. H. Schweer, bankrupt, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within 30 days from the date hereof, pursuant to an appeal filed in the

clerk's office of the United States district court for the western division of the eastern district of Arkansas, wherein Mrs. Beulah Schweer and J. C. Norman are appellants and you are the appellee to show cause, if any there be why the judgment rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jacob Trieber, judge of the United States district court for the western division of the eastern district of Arkansas, this 7th day of November 1903.

(Signed) JACOB TRIEBER, *Judge.*

Notice accepted.

(Signed) PUGH & WILEY,
Attorneys for J. C. Brown, Trustee.

(Endorsed:) Filed Nov. 7, 1903. Sid. B. Redding, clerk.

90 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

I, Sid B. Redding, clerk of the district court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office.

In witness whereof, I have hereunto set my hand and the seal of said court, this 24th day of November in the year of our Lord, one thousand nine hundred and three and of the Independence of the United States of America, the one hundred and twenty eighth.

{ The Seal of the District Court, Western Division of East. Dist. Ark., U. S. A. }

Attest: SID. B. REDDINC, *Clerk,*
By W. S. ALLEN, *Deputy Clerk.*

Endorsed on cover: File No. 19,174. E. Arkansas D. C. U. S. Term No. 162. Mrs. Beulah Schweer and J. C. Norman, appellants, *vs.* J. C. Brown, trustee for G. H. Schweer, bankrupt. Filed December 22d, 1903. File No. 19,174.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1904.

No. 162.

MRS. BEULAH SCHWEER AND
J. C. NORMAN, ... *Appellants*,

vs.

J. C. BROWN, Trustee for G. H. Schweer,
Bankrupt, ... *Appellee.*

RESPONSE TO MOTION TO DISMISS APPEAL.

Comes the appellant, Mrs. Beulah Schweer and J. C. Norman, appellants, herein and in response to motion by appellee to dismiss the appeal heretofore; to-wit, Nov. 7, 1904, granted.

1. Denies that there is no law of the United States authorizing this court to entertain jurisdiction of this appeal.

2. Denies that the appeal from the United States District Court is not such an appeal as is properly granted under the United States Statutes.

3. Denies that the question of jurisdiction is not properly certified from the court below.

4. Denies each and every cause assigned by appellee as appears from assignments numbered from one to ten inclusive.

5. Alleges that this being a summary action by a trustee in bankruptcy against a third person holding adversely against

bankrupt, could with the proposed defendant's consent, but not otherwise, be prosecuted in the District Court, and that courts jurisdiction was objected to on such grounds by demurrer based on Article "B" of Section 23 of the Bankrup'cy Act of 1898 properly presented to the court. This appeal therefore from the jurisdiction of the District Court, is based on Section 5 of the Act of Congress of March, 1891, known as the Everts Act, which provides, "Appeals or writs of error may be taken from the District Court or from the existing Circuit Courts direct to the Supreme Court in the following cases:

1. In any case in which the jurisdiction of the Court is in issue, in such case the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision."

Wherefore Appellants pray appellees motion to dismiss the appeal herein be dismissed.

DAN W. JONES,
HARRY H. MYERS,
U. S. BRATTON,
Attorneys for Appellants.

BRIEFS FOR APPELLANTS RESPONSE TO MOTION TO DISMISS APPEAL.

This action was by J. C. Brown, Trustee in Bankruptcy of the estate of G. H. Schweer, bankrupt, against Mrs. Beulah Schweer and J. C. Norman to recover funds in their possession alleged to belong to the bankrupt estate, before the referree in bankruptcy. The appellants denied the jurisdiction of the court (Tr. 4) and on review by the Honorable District Court

affirming the finding of the referree, appellant prayed an appeal to the Supreme Court to determine the question of jurisdiction as follows Tr. 54—And they pray that this appeal be allowed and that a transcript of the records, papers and proceedings *pertaining to the jurisdiction* of this honorable court, upon which said order and decree was made, duly authenticated, may be certified to the Supreme Court of the United States, which appeal was on the 20th of Nov., 1903, granted.

The effect of Section 23 "B," is best given by quoting the head notes in Bardes & Hawarden Banks U. S. Supreme Court, May 28, 1900 (4 and B. R. 1631, 178 U. S. 524).

"1. The provision of the second clause of Section 23 of the Bankruptcy Act of 1898, control and limit the jurisdiction of all courts, including the several District Courts of the United States, over suits brought by trustees in bankruptcy, to recover or collect debts due from third parties, or to set aside transfers of property, alleged to be fraudulent, as against creditors, including payment of money or property to preferred creditors.

2. "The District Court of the United States can by the proposed defendants, but not otherwise, entertain jurisdiction over suits brought by trustees in bankruptcy to set aside fraudulent transfers of money or property, made by the bankrupt to third parties before the institutions of the proceedings in bankruptcy." This action being to recover from third parties money alleged to belong to bankrupt estate comes clearly under above decision, and the appeal was taken from the jurisdiction of the court. As to any special form of certificate from the trial court, this court in the case of Shield v. Cole-

man, 157 U. S. 176, speaking of such certificate says, "It is not necessary that the word certify be formally used. It is sufficient if there is a plain declaration that the single matter which is by the record sent up to this court for decision is a question of jurisdiction, and the precise question clearly, fully, and separately stated." In the case of Smith v. McKay, 161 U. S., the court says: "When in a case appealed from a Circuit Court, the record discloses that the defendants below appealed upon the express ground that the court erred in taking jurisdiction of the bill and in not dismissing the bill for want of jurisdiction, and prayed that their appeal should be allowed and the ***question of jurisdiction*** be certified to the Supreme Court, and that ***said appeal was allowed*** and the certificate further states that there is sent a true copy of so much of the record as is necessary for the determination ot the question of jurisdiction, and as a part of the record so certified is the opinion of the court below, in accordance with which defendant's motion to dismiss the case for want of jurisdiction was denied, it sufficiently shows that the appeal was granted solely upon the question of jurisdiction." In the Assignment of errors (Tr. 55) filed in case at bar, that question was raised as follows: 1. That the United States District Court in and for the Western Division of the Eastern District of Arkansas erred in holding that this court has jurisdiction to try the case. 2. That the United States District Court in and for the Western Division of the Eastern District Court of Arkansas, erred in not sustaining the demurrer as to the jurisdiction of this court, interposed by these defendants, appellants to the original complaint in said case.

In appellant's petition for appeal (Tr. 54) the following language was used: "Do hereby appeal to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herein and they pray that the appeal be allowed and that a transcript of the records, papers and proceedings pertaining to the jurisdiction of this honorable court upon which said order and decree was made, duly authenticated may be certified to the Supreme Court of the United States." Upon the motion and the assignment of errors in both of which the matter of jurisdiction was alone raised and objected to this appeal was allowed and every essential requirement of the statute complied with.

Because the court saw fit to transmit the entire record, which discloses the demurrer against the jurisdiction of the court, and because the court's order granting this appeal, which was urged exclusively on account of the jurisdiction, but for reasons known to the trial Court, does not disclose this in particular words or a specified form, can it be argued these appellants are at fault? The petition for the appeal and the assignments of errors sufficently disclose that the jurisdiction alone was involved, even though the order, which reads as follows: "Tr. 54, Appeal allowed and returnable within thirty days and to act as a supersedaes upon execution of a supersedaes bond of $3,000 to be approved by me, signed by Jacob Trieber, Judge," does not in specific words certify the matter of jurisdiction alone was sent up for decision, we contend the prayer for appeal and order does this with sufficient clearness and directness to warrant such an appeal as is authorized by the statute referred to

and therefore the motion to dismiss should be dismissed and the matter of jurisdiction be decided.

DAN W. JONES,
HARRY H. MYERS,
U. S. BRATTON,
Attorneys for Appellants.

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Office Supreme Court
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JAMES H. McKENN

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

162

MRS. BEULAH SCHWEER AND
J. C. NORMAN, ... *Appellants,*

v.

J. C. BROWN, Trustee for G. H. Schweer,
Bankrupt, ... *Appellee.*

R. E. WILEY,

GEO. B. PUGH,

Attorneys for Appellee on These Motions.

WILSON PRINTING CO. LITTLE ROCK, ARK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

162.

MRS. BEULAH SCHWEER AND
J. C. NORMAN, ...*Appellants,*

v.

J. C. BROWN, Trustee for G. H. Schweer,
Bankrupt, ...*Appellee.*

MOTION TO DISMISS OR AFFIRM.

Comes the appellee, J. C. Brown, Trustee for the Estate of G. H. Schweer, bankrupt, and moves the court to dismiss the appeal herein because:

1. The question of jurisdiction alone is not herein certified to this court from the court below for decision.

2. There is no certificate from the court below that the question of jurisdiction was in issue in this case.

3. The court below took jurisdiction of the case and decided it upon its merits, and it does not appear that the question of jurisdiction alone is sent up to this court on this appeal for decision.

4. It does not appear, in the record, or otherwise,

what particular question, if any, of jurisdiction was in issue in the court below, nor what particular question, if any, of jurisdiction was decided by the court below, nor what particular question, if any, of jurisdiction, is sent up to this court on this appeal for its decision.

5. On the record herein this court has no jurisdiction or authority to entertain this appeal.

But if it be considered that the record in this cause shows that this court has jurisdiction to entertain this appeal, the appellee also moves the court to affirm the judgment or decree from which the said appeal purports to have been taken, because it is manifest from said record that the said appeal was taken for delay only.

J. C. BROWN,

Trustee of Estate of G. H. Schweer, Bankrupt, Appellee.

R. E. WILEY,

GEO. B. PUGH,

Counsel for Appellee on these motions.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

162.

MRS. BEULAH SCHWEER AND
J. C. NORMAN, ...*Appellants,*

v.

J. C. BROWN, Trustee for G. H. Schweer,
Bankrupt, ...*Appellee.*

BRIEF FOR APPELLEE ON HIS MOTION TO DISMISS OR AFFIRM.

This is an appeal from a District Court of the United States, sitting in bankruptcy, direct to the Supreme Court.

There is no provision in the Bankrupt Act for such appeals, other than pretermitting them to regulation by United States laws governing appeals in other cases.

Bankrupt Act 1898, Secs. 24, 25.

Denver Bank *v.* Klug, 186 U. S., 202.

Jurisdiction of this appeal depends therefore on Section 5 of the Act of March 3, 1891, establishing the Circuit Court of Appeals.

Id.

There is no pretense that this case falls within any of the classes of cases named in that section except the first, wherein appeals are allowed: "in any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."

Unless this appeal comes within that provision it cannot be entertained. In this case appellants have not caused the "question of jurisdiction alone" to be "certified to the Supreme Court from the court below for decision." There is an omission of any certificate from the court below of the question of jurisdiction or of any other question. There is no certificate of any kind from the court below in the record.

In a line of decisions beginning shortly after the passage of the Act and extending to recent date this court has held the certificate called for by the statute to be "An absolute prerequisite" to the exercise of appellate jurisdiction under the statute, and the absence of such certificate fatal to the appeal.

Maynard *v.* Hecht, 151 U. S., 324, 328.

Moran *v.* Hagerman, Id., 329, 333.

Colvin *v.* Jacksonville, 157 U. S., 368, and 58 U. S., 456.

Davis & Rankin *v.* Barber, 157 U. S., 673.

Ansbro *v.* United States, 159 U. S., 695, 697.

The Bayonne, 159 U. S., 687.

Van Wagenen *v.* Sewall, 160 U. S., 369.

Chappell *v.* United States, 160 U. S., 499, 507.

Davis *v.* Geissler, 162 U. S., 290.

Merritt *v.* Bowdoin College, 167 U. S., 745.

Consolidated Water Co. *v.* Babcock, 173 U. S., 702.

Denver Bank *v.* Klug, 186 U. S., 202, 204.

In the early part of the period three or four cases came up where this court took jurisdiction of the appeal without a formal certificate, on the grounds that the pleadings, the prayer for appeal and the order allowing it, and the judgment and opinion of the court furnished a sufficient equivalent to the certificate by setting forth distinctly and unequivocally that (1) the jurisdiction of the court below was in issue; (2), that it was decided against appellant; (3), that the question of the jurisdiction alone was sent up to this court for decision, and (4), the precise nature of the question of jurisdiction which was sent up.

Lehigh Mining and Mfg. Co., 156 U. S., 322.

Shields *v.* Coleman, 157 U. S., 168.

Interior Construction Co. *v.* Gibney, 160 U. S., 217.

Smith *v.* McKay, 161 U. S., 355.

These cases are exceptional, however, and the court in later opinions has explained and limited them and indicated its intention not to enlarge their application, nor to make them authorities to sustain appeals

in the absence of formal certificates, unless the record otherwise supplies clearly and distinctly every requirement which it is the office of the statutory certificate to furnish.

Van Wagenen *v.* Sewall, 160 U. S., 369.

Chappell *v.* United States, 160 U. S., 499, 507.

Filhoil *v.* Torney, 194 U. S., 356.

Louisville Trust Co. *v.* Knott, 191 U. S., 225.

In the few cases in which the appeals are entertained without the statutory certificate, it is made clearly to appear that every essential to the appeal is otherwise supplied.

In re Lehigh Manufacturing Co., 156 U. S., 322, to give the U. S. Court jurisdiction, the plaintiff in ejectment alleged diversity of citizenship; the defendant distinctly answered in his pleas that plaintiff had been fraudulently and collusively organized as a corporation of Pennsylvania for the sole purpose of the conveyance to it by a West Virginia corporation of the land in controversy in order thus to create a diversity of citizenship, the defendant and the original claimant having been citizens of West Virginia. This raised a definite issue of jurisdiction, whose particular char-

PUGH AND WILEY — BEN

acter was apparent. The judgment of the court was that the pleas to the jurisdiction be sustained (after reciting them), that the court has no jurisdiction of the case and it is therefore dismissed. The petition

for writ of error recited the dismissal for want of jurisdiction and prayed a writ of error upon the said question of jurisdiction, and the writ was "allowed as prayed for." This court in its opnion re-affirmed the rule in Maynard *v.* Hecht, but held the question of jurisdiction to be sufficiently certified, because that was the sole question in the record, the cause having been dismissed for want of jurisdiction, and the particular question of jurisdiction decided was distinctly and definitely stated in the pleas.

The distinction is made in this case (p. 327) between cases where the sole question decided was one of the jurisdiction as where the case is dismissed for want of jurisdiction, and cases where other questions than the jurisdiction are decided, as where the court decides the question of jurisdiction affirmatively and then disposes of the merits of the case with all the issues therein involved; and it is intimated that in the latter class of cases, the certificate is absolutely essential and will not be dispensed with. The opinion cites United States *v.* Jahn, 155 U. S., 109, 112, to this effect.

In the case at bar the jurisdiction was upheld and the court went on and decided the merits of the whole case, involving issues of fact and propositions of law. A certificate of the jurisdiction alone is therefore essential under the authority of the foregoing case.

It also appears in the Lehigh Manufacturing Co. case that the precise question of jurisdiction decided

and appealed is fully and clearly stated in the pleadings. No such showing is made anywhere in the record at bar.

In the case of Shields *v.* Coleman, 157 U. S., 168, there was no formal certificate, but the petition for appeal sets out distinctly and fully the precise question of jurisdiction decided against appellant and prays an appeal from the decree taking and exercising jurisdiction; and the court's order allowing the appeal states "this appeal is granted solely upon the question of jurisdiction," and makes provision for the transmission to the appellate court of such portions only of the record as pertains to the question of jurisdiction.

Here again, without the formal certificate, everything which the certificate is made for is otherwise supplied. In the words of Mr. Justice Brewer in his opinion in the case "there is (1) a plain declaration that the single matter which is by the record sent up to this court for decision is a question of jurisdiction, and (2) the precise question is clearly, fully, and separately stated." p. 177.

Neither of these things appear in the case at bar, and the foregoing case is therefore no authority for sustaining this appeal.

Interior Construction Co. *v.* Gibney, 160 U. S., 217, is another case where the appeal was entertained without a formal certificate, but like Lehigh Mining & Mf'g. Co. *supra*, it is easily distinguished from the case at bar by having no question in it except that of

the jurisdiction of the court. The complaint alleged diversity of citizenship as the ground of jurisdiction; defense filed plea in abatement that defendants were not all residents of the same district; and that court was therefore without jurisdiction; plaintiff demurred to the plea, and the court sustained the demurrer and dismissed the action for want of jurisdiction. Appeal was prayed, asking review of the judgment that court had no jurisdiction. Clearly here the question of jurisdiction was the sole question decided, and this question alone is submitted on appeal, and also the "precise question is clearly, fully and separately stated," in the plea to the jurisdiction. This case is no authority for sustaining the appeal at bar, since in the latter the court below took jurisdiction and decided many questions besides that of jurisdiction, and nowhere does it appear in the record at bar that a single, definite question of jurisdiction is sent up for this court's decision; a *fortiori* is there no "precise question" of jurisdiction, "clearly, fully and separately stated."

Smith *v.* McKay, 161 U. S., 355, is the only further case where the court has held the absence of the formal statutory certificate to be supplied by the appearance of the requisite facts otherwise in the record. There the defendant filed its special motion to dismiss the bill because plaintiff had a plain, adequate and complete remedy at law. Motion was denied and after decree for plaintiff defendant appealed upon the ex-

press ground that the court erred in taking jurisdiction of the bill, and in his appeal prayed that "the question of jurisdiction be certified to the Supreme Court." The said appeal was allowed, and the certificate states that so much of the record as pertains to the court's jurisdiction is sent up. Here the "precise" question of jurisdiction is "clearly, fully and separately stated" in the defendant's motion to dismiss the bill, and the prayer for appeal, the allowance of same, the opinion of the court, and the certificate to the record clearly indicated the question of jurisdiction alone is sent up. The distinction between this and the case at bar is apparent from our remarks distinguishing the previous cases; the case at bar being particularly lacking in any "full, clear, and separate statement" of the "precise question of jurisdiction" in issue. Besides which the appeal in Smith *v.* McKay was dismissed on other grounds and the case thus loses much force as an authority for entertaining appeals.

These cases can hardly be called exceptions to the rule requiring the statutory certificate as a pre-requisite to ascertaining the appeal, which is held in Maynard *v.* Hecht and the line of decisions following it, because they all endorse and enforce the reason for the rule. But such slight modification of the application of the rule as is made in them is further limited and explained by later cases.

In Van Wagenen *v.* Sewal, 160 U. S., 369, plaintiff's

bill in equity was demurred to by defendant because a previous final decree had exhausted the court's jurisdiction over the case, and second, the court had no power or jurisdiction to grant the petitioners relief. The court dismissed the bill. Plaintiff appealed and in absence of a certificate sought to sustain the appeal on authority of Lehigh Mining & Mf'g. Co., and Shields *v.* Coleman, *supra.* But this court distinguished them and enforced the rule of Maynard *v.* Hecht, holding that there was no "precise question of jurisdiction, fully, clearly and separately stated." Mr. Justice Brown, in his opinion, says, "We cannot be required to search the record to ascertain whether the petition was dismissed for the want of equity, or for some other reason. Indeed, it appears to have been the very object of the fifth section of the Act of 1891, to have the question of jurisdiction plainly and distinctly certified to us, or at least to have it appear so clearly in the decree of the court below that no other question was involved, that no further examination of the record would be necessary." p. 373.

In Chappel *v.* United States, 160 U. S., 499, the cases of Shields *v.* Coleman, Lehigh Mining & Mf'g. Co. and Interior Construction Co. *v.* Gibney, *supra*, are again cited to sustain an appeal in the absence of a certificate, but this court again enforces the rule of Maynard *v.* Hecht. Mr. Justice Gray in his opinion in distinguishing and explaining the case aforesaid,

states the essential requisite to the appellate jurisdiction by quoting from Shields *v.* Coleman as follows: (p. 508). "It is not necessary that the word 'certify' be formally used. It is sufficient if there is a plain declaration that the single matter which is by the record sent up to this court for decision is a question of jurisdiction, and the precise question clearly, fully and separately stated. No mere suggestion that the jurisdiction of the court was in issue will answer. This court will not of itself search, nor follow counsel in their search of the record, to ascertain whether the judgment of the trial court did or did not turn on some question of jurisdiction. But the record must affirmatively show that the trial court sends up for consideration a single definite question of jurisdiction."

No subsequent case appears where an appeal was entertained in the absence of a certificate on authority of the foregoing cases, but there are several since then dismissing appeals for want of certificates.

Davis *v.* Geissler, 162 U. S., 290.

Merritt *v.* Bowdoin College, 167 U. S., 745.

Consolidated Water Co. *v.* Babcock, 173 U. S., 702.

Denver Bank *v.* Klug, 186 U. S., 202, 204.

The latest case involving the question is Filhiol *v.* Torney, 194 U. S., 356.

In it after consideration of all the adjudged cases on the subject, which are collated and cited in the opin-

ion, the court lays down the fully considered and approved test of what only will be held by this court as a sufficient equivalent to the formal certificate where the latter is wanting. From all the cases on the subject Mr. Justice Brewer in the opinion in the case selects and approves Chappell *v.* United States, 160 U. S., 499, as best stating the rule, and quotes largely from the opinion therein which in turn had quoted from and adopted that part of the opinion in Shields *v.* Coleman, *supra*, which lays down the essential requisite of the appellate jurisdiction, and which carefully explains the *sine qua non* of the equivalent of a formal certificate. These three cases, therefore, the first entertaining the appeal and the latter two denying it, together constitute the law of the case at bar.

Quoting from Mr. Justice Brewer's opinion in Shields *v.* Coleman, *supra* (p. 177), (1) "a plain declaration that the single matter which is by the record sent up to this court for decision is a question of jurisdiction and (2) the precise question clearly, fully, and separately stated," are essential requisites *sine qua non* of a sufficient equivalent of a formal certificate. This and more language from this opinion is quoted in the Chappell case by Mr. Justice Gray, who applies the test to the facts of that case, and holds (p. 509) "Here, certainly, is no such clear, full and separate statement of a definite question of jurisdiction, as will

supply the want of a formal certificate under the first clause of the statute."

In the case of Huntington *v.* Laidley, 176 U. S., 668, Mr. Justice Gray delivering the court's opinion concisely states both essentials together thus (p. 676), "the record must distinctly and unequivocally show that the court below sends up for consideration a single and definite question of jurisdiction."

The case at bar does not answer this test.

There is not anywhere in the record a plain declaration that the single matter which is by the record sent up to this court for decision is a question of jurisdiction. The court below took jurisdiction and decided many questions of law and fact on the merits of the case, and entered a decree for plaintiff as prayed for, and the prayer for appeal is general, from the judgment of the court.

The petition for appeal (R. 54) recites that defendant is aggrieved by the order and decree "wherein it was ordered that defendants pay over to J. C. Brown, trustee, $2.000," and then prays "plaintiffs do hereby appeal from said order and decree to the Supreme court." The allowance is general by an order endorsed on the petition as follows: "Appeal allowed and returnable within 30 days."

Says the court in Chappell's case, 160 U. S., 507:

"If both a question of jurisdiction and other questions were before the court below, and a writ of error

is allowed in the usual and general form to review it. judgment without certifying or specifying the question of jurisdiction, this court cannot take jurisdiction."

This fits the case at bar exactly. It is no answer to say that the assignment of errors, which is referred to in the petition for appeal as the reason for the appeal, assigns only the taking of jurisdiction by the court, as error, because it is conceivable the defendants could not conscientiously complain that the court erred in giving judgment for plaintiff on the merits. The assignment of errors cannot limit the appeal to any particular separate step or action of the court in the cause. Its office is merely to assign the reasons for the appeal; to point out the errors because of which the judgment or other particular step in the cause appealed from is asked to be reversed; and it is the office of the prayer for, and the order allowing, the appeal to designate what action of the court is appealed from. Here the defendants answered to the merits, introduced testimony in support of their answer, and after hearing at which they were heard by counsel, and a decree against them, they pray an appeal generally from the judgment of the court against them on the merits. This is far short of the "plain declaration that the sole question sent up to this court for its decision is a question of jurisdiction," necessary to the entertaining of this appeal.

But the court considers that there is a sufficient

showing in the record that the question of jurisdiction alone is here sent up for decision, the appeal must still be dismissed for failure to show what the question of jurisdiction is. The latter is perhaps the most important office of the statutory certificate, as recognized by all the cases because it operates as a time saver to this court, thus enforcing the policy of the statute to relieve and prevent congestion of the docket. No case will be found where this requirement is dispensed with. We have already herein commented on all the cases dispensing with the formal certificate and have shown that in them all the particular question of jurisdiction is clearly and fully shown, and that, too, by the record proper—the pleadings, judgment and appeal papers. No search of the testimony was required in any of them to find the question.

There is no statement whatever in this record, in the pleadings, in the testimony, or elsewhere, clear, separate, or otherwise, of the precise question of jurisdiction, if any, in issue in the court below, *a fortiori*, none of the question, if any, sent here on appeal.

The pleadings of the defendants to the petitions do not intimate any grounds for lack of jurisdiction by the court. The response of defendant Norman (R. 4), after answering fully to the merits has the following only as to the jurisdiction:

"Defendant J. C. Norman, further answering, says this court is without jurisdiction to hear and determine

this case and prays that the same may be dismissed."

The response of defendant, Beulah Schweer, also responds fully to the merits, but has as to the jurisdiction the following only:

"Second. She denies that this court has jurisdiction to hear or determine this cause." (R. 4.)

Other than these statements no mention whatever is made in the pleadings of the jurisdiction of the court.

The referee in bankruptcy before whom the proceedings originated, after a full hearing made orders against defendants as prayed by the petitions (R. 8, 9), and no reference was made in them as to the jurisdiction of the court. At defendants' request the referee made his findings of fact and law, and certified the questions, with all the testimony, to the judge of the District Court (R. 5-7), but not a word is said therein about the jurisdiction of the court.

The District Judge heard the matter *de novo* and made an order therein as prayed by plaintiffs, and the jurisdiction of the court is not mentioned in them (R. 53-54). He also hands down a memorandum of opinion in the case (R. 51-53), but no question of the jurisdiction is therein referred to. Neither the prayer for appeal, the order allowing it, nor the assignment of errors show any particular question of jurisdiction.

The prayer for appeal mentions it not otherwise than by asking "that a transcript of the records, papers,

and proceedings pertaining to the jurisdiction of this honorable court upon which said order and decree was made, duly authorized may be certified," and by referring to the assignment of errors as the reasons for the appeal prayed. (R. 54.) The assignment of errors, two only in number, simply assign that the court (1) "erred in holding that it had jurisdiction to try this cause," and (2) in "not sustaining the defendants' demurrer to the jurisdiction" (R. 55), without in any way intimating what grounds for lack of jurisdiction existed.

Of course the testimony makes no mention of the jurisdiction of the court.

Thus it is seen there is in the record not the slightest showing of what question or questions of jurisdiction, if any, were decided by the court below, or sent to this court by the appeal for decision; much less is there such a showing of the precise question as is required by the test approved by this court in all the cases, and especially in Shields *v.* Coleman, Chappell *v.* U. S. and Filhiol *v.* Torney, *supra.* The language quoted in the last case from the opinion in the Chappell case is applicable to the case at bar.

"Here, certainly, is no such clear, full, and separate statement of a definite question of jurisdiction as will supply the want of a formal certificate under the first clause of the statute."

Chappell *v.* U. S., 160 U. S., 509.

In the Chappell case the defendant demurred to the jurisdiction and set up specifically several grounds for lack of jurisdiction, namely, that the proceedings should have been had in a court of the State of Maryland, and that Congress had not authorized the United States to bring the suit, and that the statute under which the proceedings were had was unconstitutional. And the prayer for the writ of error asks the writ "in order that said rulings, judgment, etc., may be reviewed by the Supreme Court upon the question of jurisdiction raised in the demurrer." How far stronger is this showing of a definite question of jurisdiction than that of the record in the case at bar. Yet this court held it was insufficient because it does not "define or indicate any specific question of jurisdiction" (p. 508), and dismissed the appeal.

The latest case, Filhiol *v.* Torney, is still stronger. In it, the sole question decided was one of jurisdiction, the complaint being dismissed for want of jurisdiction.

There was a demurrer by defendant to the jurisdiction setting up specifically first, a want of jurisdiction over the present defendant; second, a like want of jurisdiction over the subject matter of the action. The opinion of the court below was confined solely to a discussion of the question of jurisdiction over the subject matter. Notwithstanding this showing the court held there was "not anything which can be considered an equivalent to the formal certificate," and

dismissed the appeal. This decision indicates the court's intention not to go further in the direction of dispensing with the statutory certificate. It is especially indicative of the importance attached to the second requirement of the rule, namely, that the "precise question of jurisdiction must be fully, clearly and separately stated," for it was for want of that showing alone that the appeal was dismissed, there being no sort of uncertainty that the sole question decided and appealed was one of jurisdiction. This makes it a strong authority for dismissing this appeal, for the record showing in the case at bar of a specific question of jurisdiction falls very far short of the showing in the Filhiol case. In fact, as said before, there is an entire want of any such showing in the case at bar.

The policy of the Act of March 3, 1891, to limit and restrict the bringing of cases to this court on appeal and thus to relieve and prevent a crowded docket is well recognized, and has been repeatedly endorsed by this court. The provisions of this fifth section are directly pursuant to that policy, and there being no attempt in the present case to comply with them, this policy as well as the letter of the statute requires the dismissal of this appeal.

Nor will any hardship result to defendants by the enforcement of this statute and the dismissal of the appeal, for they have fully presented to two tribunals their defense—the only defense they could urge in any

court—and have had two separate hearings on its merits.

The case originated before a referee in bankruptcy who gave defendants full opportunity to get testimony and witnesses, and to present their defense; and they did introduce witnesses and testimony; the referee heard all the testimony offered, and after a hearing he made a careful finding of fact that this bankrupt's wife, and his attorney held $2,000, as his agent or trustee, of money belonging to the bankrupt's estate, and made an order directing them to turn it over to the trustee. Afterwards the District Judge again entered fully into all the testimony on a hearing and as said in his opinion: "In view of the earnestness with which counsel have attacked the findings of fact, as well as conclusions of law, of the referee, I have carefully gone over the testimony and considered the case as if it was tried *de novo* before me without giving that weight to the findings of the referee, that under the law, they are entitled to." (R. 51, 52.)

And he fully sustained the facts found by the referee and made the same order. The merits of the defendant's defense have thus been carefully heard, and acted upon by two practically different courts with the same result, and no injustice can come to defendants by the dismissal of the appeal.

Having had their day in court on the merits, defendants in urging that the court before which they

were heard had no jurisdiction, but that some other court had jurisdiction, are making a technical and dilatory resistance, and it is their duty to bring themselves clearly within the provisions of the statute which they invoke to authorize their appeal, and it being apparent they have not done this, their appeal should be dismissed.

II.

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED.

If the court should not sustain our motion to dismiss the appeal, there is still on this record sufficient color for the motion to dismiss to warrant the court in entertaining the motion to affirm.

Whitney *v.* Cook, 99 U. S., 607.

The Alaska, 130 U. S., 201, 208.

Hinckley *v.* Morton, 103 U. S., 764, 765.

The single question presented by this record is: Has the court of bankruptcy, by summary proceedings, the power to compel one to deliver to the bankrupt's trustee in bankruptcy money held without any *bona fide* claim of adverse right, but merely as agent for the bankrupt?

This question has been settled in the affirmative by this court in Mueller *v.* Nugent, 184 U. S., 1; Bryan *v.* Bernheimer, 181 U. S., 188, and Jaquith *v.* Rowley, 188 U. S., 620.

The District Court, following these cases, decided it so in the case at bar and the judgment should therefore be affirmed.

The appellants have caused all the evidence in this case to be transmitted here as part of the record, doubtless intending to ask this court to re-examine it in order to discredit or reverse the finding of facts by the lower court. But this court will look only to the finding of facts by the lower court, in considering the questions of law to be determined. It has so provided in its rules.

General Orders in Bankruptcy XXXVI, paragraph 3, provides: "In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States * * * the record transmitted on such appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law."

Few cases so far have come to this court by appeal under the bankruptcy act, but in such as have come this rule has been followed, and approved.

Bardes *v.* Hawarden Bank, 178 U. S., 524.

Pirie *v.* Chicago Title & Trust Co., 182 U. S., 438.

Jacquith *v.* Alden, 189 U. S., 78, 81.

N. Y. County Bank *v.* Massey, 192 U. S., 138.

Appeals, like this at bar, upon certificate are held to be governed by the same rules which govern

the certification of questions or propositions of law from the Courts of Appeals under the Act af March 3, 1891.

Bankruptcy Act, 1898, Sec. 25, d.
Collier on Bankruptcy (4th Ed.), p. 270.
Bardes *v.* Bank, 175 U. S., 526.
Denver Bank *v.* King, 186 U. S., 202, 205.
Maynard *v.* Hecht, 151 U. S., 324, 327.

Such certificates are heard not upon the whole case as shown by the evidence, but upon the finding of facts by the lower court, and are confined to that finding.

Warner *v.* New Orleans, 167 U. S., 467, 474-5.
Wall *v.* Cox, 181 U. S., 247.
Cross *v.* Evans, 167 U. S., 60.

A rule of the Supreme Court similar to General Order XXXVI, in banruptcy, provides what shall constitute the record in appeals from the Court of Claims.

Rule 1, of Order in Reference to Appeals from Court of Claims, Desty's Fed. Procedure (9th Ed.), p. 1543.

This rule was before the court for consideration shortly after its promulgation in the case of De Groot *v.* United States, 5 Wall., 419, and it was held that it would be strictly enforced, and that the finding of facts sent up by the lower court was conclusive on this court on the appeal and that the evidence should not be sent up. The court in its opinion says (p. 427): "We take

this occasion to say that we shall adhere strictly to the rules we have prescribed, and shall regard no other matter found in the transcripts sent to us than what they allow."

And this ruling has been adhered to since then.

U. S. *v.* Smith, 94 U. S., 214.

U. S. *v.* Pugh, 99 U. S., 265, 270.

U. S. *v.* Clark, 94 U. S., 73, 76.

There is also a similar rule governing contents of record in appeals in admiralty cases, based on an Act of Congress of February 16, 1875, " to facilitate disposition of cases in the Supreme Court."

Rules of Supreme Court, Rule 8, Cl. 6.

Under this rule it is held that the finding of facts by the court below is conclusive on appeal, and the evidence is not a part of the record.

The Annie Lindsey, 104 U. S., 185, 188.

The Abbotsford 98 U. S., 440.

The Benefactor, 102 U. S., 214.

The Adriatic, 103 U. S., 730.

Merchants Ins. Co. *v.* Allen, 121 U. S., 67, 72.

The S. C. Tyson, 105 U. S., 267, 270.

In the last named case a motion to dismiss was overruled, but the accompanying motion to affirm was sustained, the court saying (p. 270): "The only question presented arises on the finding of facts. From these it appears," etc., going on to hold that the appeal was taken for delay.

Similarly in cases tried without a jury under sections 649 and 700, Rev. Stat., the finding of facts by the Circuit Court is not reviewable in this court.

Tyng *v.* Grinnell, 92 U. S., 467, 471.

Ex parte French, 91 U. S., 423.

The E. A. Packer, 140 U. S., 360, 365.

The court doubtless promulgated clause 3 of General Order XXXVI in Bankruptcy, in the light of the foregoing rules and decisions, and will adhere to the practice indicated. Under the rule the evidence is not a part of the record, and even though it be transmitted, on appeal, with the transcript, will not be re-examined here, but the court will confine its consideration to questions arising on the facts as found by the lower court.

In the case at bar the District Judge handed down a memorandum of opinion (R. 51-53), in which he made a finding of facts concerning the case, considering the case, in the language of the court, " as if it was tried *de novo* before me, without giving that weight to the findings of the referee that, under the law, they are entitled to." (R. 52.)

These findings of fact by the judge are in substance:

That appellant, Beulah Schweer, the wife of the bankrupt, received from the bankrupt $2,000 in cash, belonging to him, shortly before the institution of the proceedings in bankruptcy, to hold same as the money of her husband, in order to enable him to defraud his

creditors and prevent his trustee in bankruptcy from receiving it.

That appellant, J. C. Norman, now has possession of the said $2,000 in cash, and makes no claim to it for himself, he having received it from Mrs. Schweer, to indemnify him against loss on his guarantee to one whom he had procured to become surety on a bail bond for the bankrupt's appearance to answer a criminal charge, and the said bond having been discharged without any liability being incurred.

That there was no adverse holding or claim to the money, by either of the appellants, and that Norman held the money as agent for the true owner, who was the appellee, as trustee of the bankrupt's estate, it having been the property of the bankrupt at the time he was adjudicated.

Upon these facts the court concluded that the trustee did not have to institute a plenary action against Norman, upon his refusal to turn over the money to the trustee, but the proceeding by petition and order to show cause before the referee was all that was necessary. (R. 53.) And an order was made requiring Norman to turn the money over to the trustee, sustaining a like order which had been made by the referee. (R. 53.)

As before stated this court has heretofore thoroughly examined the questions arising upon facts like the foregoing found by the court, in Mueller *v.* Nugent,

Bryan *v.* Bernheimer, and Jacquith *v.* Rowley, *supra*, and declared the law to be as found herein by the District Judge.

If by the approval by the District Judge in his opinion (R. 53), of the findings of facts by the referee, the latter be held to constitute part of the record, the result will be the same, for these findings are identical in effect with those in the opinion of the District Judge, that is to say, that Norman holds the $2,000 without making any claim to it, having received it for a temporay use in the bankrupt's behalf, from Mrs. Schweer, who had received it shortly before the bankruptcy proceedings, from her husband to whom it belonged, to hold for him for the purpose of secreting it from his trustee in bankruptcy. (R. 5-7).

It is apparent the appeal was taken for delay and the judgment should be affirmed.

R. E. WILEY,

GEO. B. PUGH,

Attorneys for Appellee on These Motions.

OPINION

Supreme Court of the United States.

No. 162.—October Term, 1904.

Mrs. Beulah Schweer and J. C. Norman, Appellants, vs. J. C. Brown, Trustee for G. H. Schweer, Bankrupt.	Appeal from the District Court of the United States for the Eastern District of Arkansas.

[November 7, 1904.]

The Chief Justice: This was a summary proceeding in the District Court of the United States for the Eastern District of Arkansas, in bankruptcy, requiring the payment to the trustee in bankruptcy of the sum of two thousand dollars as part of the assets of the bankrupt's estate. In return to a rule, one of the respondents alleged that he had paid the money over to the other and denied the jurisdiction of the court. The other, Mrs. Schweer, denied that she had or ever had had any money belonging or due to the estate, and denied jurisdiction. The matter was heard before a referee, who made findings of fact and conclusions of law, and ordered the return of the money. It was then carried to the District Court and there heard *de novo*. The District Court sustained the referee and entered decree for the payment of the money to the trustee. Thereupon an appeal was taken directly to this court on the ground that the case fell within the first of the classes of cases enumerated in section five of the judiciary act of March 3, 1891. But that class only includes cases where the question is as to the jurisdiction of courts of the United States as such, and the question has to be certified. That was not the question raised here, and none such was certified. And it is settled that the District Court had jurisdiction to determine whether any adverse claim to the money was asserted at the time the petition was filed. *Mueller* v. *Nugent*, 184 U. S. 1; *Louisville Trust Company* v. *Comingor*, Id. 18.

If the court erred in retaining jurisdiction on the merits, the remedy was by petition to the Circuit Court of Appeals under § 24*b* of the bankruptcy law. *Holden* v. *Stratton*, 191 U. S. 115.

Appeal dismissed.